UNITED STATES
INTERNATIONAL TRADE COMMISSION

In the Matter of:	)	
	)	
CERTAIN FROZEN FISH	)	Investigation No.:
FILLETS FROM VIETNAM	)	731-TA-1012 (Preliminary)
	)	

Pages: 1 through 175

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Friday
July 19, 2002

Room 101
U. S. International
Trade Commission
500 E Street, SW
Washington, D.C.

The preliminary conference commenced pursuant to Notice, at 9:30 a.m., before the Director of Investigations of the United States International Trade Commission, LYNN FEATHERSTONE, presiding.

APPEARANCES:

On behalf of the International Trade Commission:

Staff:

LYNN FEATHERSTONE, DIRECTOR OF INVESTIGATIONS
GEORGE DEYMAN, SUPERVISORY INVESTIGATOR
LARRY REAVIS, INVESTIGATOR
MARY JANE ALVES, ATTORNEY/ADVISOR
JOHN GIAMALVA, ECONOMIST
ROGER COREY, INDUSTRY ANALYST
JIM STEWART, AUDITOR AND ACCOUNTANT

APPEARANCES (continued):

In Support of the Imposition of Antidumping Duties:

On behalf of Catfish Farmers of America (CFA) and individual U.S. catfish producers:

KIM COX, Director of Customer Service, Consolidated Catfish Co. (CCC), LLC
BILL DAULER, Vice President of Sales and New Business Development, CCC
RANDY EVANS, Owner, Evans Fish Farm
SEYMOUR JOHNSON, Secretary-Treasurer, Marie Planting Co.
CHARLES PILKINTON, Pilkinton Brothers Catfish Farm
LOUIS THOMPSON, President, Catfish Farmers of America
HUGH WARREN, Executive Vice President, Catfish Farmers of America
RANDY RHODES, Vice President of Sales and Marketing, Southern Pride Catfish Co.
DAVID PEARCE, Pearce Catfish Farm, Inc.
DANNY WALKER, CEO, Heartland Catfish
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In Opposition to the Imposition of Antidumping Duties:

On behalf of Vietnam Association of Seafood Exporters and Producers (VASEP) and its individual members

DR. NGUYEN HUU DUNG, General Secretary, VASEP
NGO PHUOC HAU, General Director, An Giang Fisheries (AGIFISH) Company
NGUYEN HUU CHI, Vice Director, Ministry of Trade, Vietnam Government
CHRISTINE NGO, Vice President, H&N Foods International
MATTHEW FASS, Vice President, Maritime Products International
ROBIN RACKOWE, President, International Marine Fisheries
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Washington, D.C.

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P R O C E E D I N G S

(9:30 a.m.)

MR. FEATHERSTONE: Good morning. Welcome to the United States International Trade Commission's conference in connection with the preliminary phase of Antidumping Investigation Number 731-TA-1012 concerning Imports of Certain Frozen Fish Fillets from Vietnam.

My name is Lynn Featherstone. I am the Commission's Director of Investigations, and I will preside at this conference. Among those present from the Commission staff are George Deyman, the supervisory investigator; Larry Reavis, the investigator; Mary Jane Alves, the attorney/advisor; John Giamalva, the economist; Roger Corey, the industry analyst; and Jim Stewart, the auditor and accountant.

The purpose of this conference is to allow you to present to the Commission through the staff your views with respect to the subject matter of the investigation in order to assist the Commission in determining whether there is a reasonable indication that an industry in the United States is materially injured or threatened with material injury, or that the establishment of an industry in the United States is materially retarded, by reason of imports of the merchandise which is the subject of the investigation.

Individuals speaking in support of and in opposition to the petition have each been allocated one hour to present their views. Those in support of the petition will speak first. The chair may ask questions of speakers either during or after their statements; however, no cross-examination or questions to opposing speakers will be permitted. At the conclusion of the statements from each side, each side will be given 10 minutes to rebut any opposing statements, suggest issues on which the Commission should focus in analyzing data received during the course of the investigation, and make concluding remarks.

This conference is being transcribed, and the transcript will be placed in the public record of the investigation. Accordingly, speakers are reminded not to refer in your remarks to business proprietary information and to speak directly into the microphones. Copies of the transcript may be ordered by filling out a form which is available from the stenographer. This proceeding is also being shown within the building on closed-circuit television.

At this point, I would like to deviate from our normal process for just one moment to advise everyone that the Commission at this time does have a vote scheduled in this room for 11 a.m. It's on wire rod remand, and there is a chance that it will be delayed, but if it is not, we will have a short recess at about ten minutes until 11. The parties that are at the table need not move at all. The staff will move to the staff table over on that side of the room. We will allow the wire rod group to come in for the vote, and then we will resume the conference right after that. I apologize for that, but last minute timing issues.

You may submit documents or exhibits during the course of your presentations. However, we you may not submit business proprietary information. Any information for which business proprietary treatment is requested must be submitted to the secretary in accordance with Commission Rule 201.6. Any documents that are letter size and copiable will be accepted as conference exhibits and incorporated into the record of the investigation as an attachment to the transcript. Other documents that you would like submitted for the record should be filed with your post-conference briefs.

Speakers will not be sworn in. However, you are reminded of the applicability of 18 U.S.C. 1001 to false or misleading statements and of the fact that the record of this proceeding may be subject to court review if there is an appeal.

Finally, we ask that you state your names and affiliations for the record before beginning your presentations. Are there any questions? If not, welcome, Ms. Slater. Please proceed.

MS. SLATER: Thank you, Mr. Featherstone. Good morning. Good morning, members of the staff. It's a pleasure to be with you this morning on behalf of the Catfish Farmers of America and a number of individual U.S. catfish processors. We have brought before you today a panel of extremely knowledgeable individuals who we hope will be able to describe for you the product and the market at issue and also to answer any questions that you might have.

Let me first introduce our panel. With me this morning are Mr. Louis Thompson, sitting behind me, who is president of the Catfish Farmers of America; Mr. Hugh Warren, who is the executive vice president of the Catfish Farmers of America. To my left is Mr. Randy Rhodes, who is the vice president for sales and marketing of Southern Pride Catfish Company in Alabama. We have Mr. Danny Walker, the CEO of Heartland Catfish Company in Mississippi; Mr. Bill Dauler, vice president of sales for Consolidated Catfish Company; and Mr. Kim Cox, also of Consolidated Catfish, both from Mississippi. Also with us today are Mr. Randy Evans, Mr. Charles Pilkinton, Mr. David Pearce, and Mr. Seymour Johnson, who are all catfish farmers in different areas of the country. Also today we have Mr. Dan Klett of Capital Trade, who will give us some economic analysis. I also want to note the presence of David Park and Thea Rozman of Akin

Gump and Tom Rogers of Capital Trade, three individuals who have done quite a bit of hard work on this case.

The case before the Commission in this investigation is one that presents a quite compelling fact pattern. U.S. farmed-raised catfish industry is the largest aquaculture industry in the United States. It employs more than 13,000 farmers and processors and creates many thousands of additional jobs in some of the most economically depressed regions of our country. It is an industry, as you will hear this morning, that has successfully created from the ground up a market for its product, and it has done this in a relatively short period of time.

Vietnamese basa and tra frozen fillets began to enter this country in the late-1990's. These frozen fillets were initially marketed under all sorts of names, including China Sole, White River Cobbler, Orange Roughie. A variety of other things were tried, but there was no real market for fish sold under this name, and in 2000 the exporters and importers of Vietnamese basa and tra fillets began to market this product as farm-raised catfish. In doing this, they tapped into a market that was large and growing due to the efforts of the U.S. industry. Carrying names like Cajun Delight Catfish and Delta Fresh, the Vietnamese frozen fillet volumes, which were priced well below the domestic product, grew exponentially.

The imports of these fillets, these frozen fillets that came in only under the HTS category for frozen catfish fillets, grew from less than two million pounds in 1999 to over 17 million pounds in 2001. The average unit value dropped with the growth in the volumes, from $2.16 a pound in 1999 to $1.38 a pound last year. By the first quarter of this year the price had dropped to $1.29.

The growth in volume has come at the direct expense of U.S. catfish farmers and processors of frozen fillets. The pricing of this fish has driven frozen fillet prices to all-time lows and has led to pond bank price levels, the price paid to farmers for their fish, that are so low that catfish farmers have been robbed up profitability.

U.S. processors who have survived by reducing the price paid for their fish are now caught in a squeeze and see their own positions eroding. As frozen fillet prices remain depressed, fish prices cannot be further reduced. Farmers are reducing production, and processors are beginning to feel the economic impact particularly severely.

We believe that by any measure you will find a reasonable indication that the massive influx of frozen catfish fillets from Vietnam at exceptionally low prices has caused material injury and is threatening further injury to domestic producers of frozen catfish fillets.

This morning we will present testimony designed to help you understand this product and the issues in the market, and we're going to then just briefly look at some of the legal and economic issues in the case.

I would like to turn first to Mr. Randy Rhodes of Southern Pride Catfish. Randy?

MR. RHODES: Good morning. My name is Randy Rhodes. I'm the vice president of sales and marketing for Southern Pride Catfish Company. Southern Pride is a catfish processor located in Greensboro, Alabama, that employs 880 workers and purchases fish from approximately 230 fish farmers. I have been with Southern Pride since 1986, and I have seen the company grow from 80,000 pounds per week to over two million pounds per week in this position today as one of the leading catfish processors in the country.

Over the same period the market for frozen catfish fillets has grown from 27 million pounds in 1986 to more than 130 million pounds in 2001. Our industry has grown steadily over the last 20 years and has expanded remarkably in the last decade. This growth has come as a result of a costly and concerted effort by farmers to promote farm-raised catfish and by the hard work of processors to creatively and effectively market our products, particularly frozen fillets.

Certainly over the last 25 years there have been cyclical downturns, periods when both production and prices have fallen, but the frozen catfish fillet market has never experienced the situation that we're in today. Frozen basa and tra fillets from Vietnam have especially in the last year and a half tapped into a growing demand for catfish. While marketing this product as farm-raised catfish, using product names and labels that resemble those used by the U.S. catfish industry but selling at prices well below our own, the importers of Vietnamese basa and tra have successfully taken a large portion of the frozen fillet market. They have pushed frozen fillet prices to their lowest level ever and have forced processors to reduce the pond bank price paid to fish farmers to a point where the industry's survival is threatened.

It is for this reason that Southern Pride has joined with other members of the U.S. catfish industry to file this antidumping petition. I will describe today the structure of the domestic catfish industry, some important characteristics of the market for frozen catfish fillets, and the impact of low-priced imports of frozen fish from Vietnam.

The domestic industry producing frozen catfish fillets includes hundreds of catfish farmers and less than two dozen processors. Farmers grow the fish, and processors take the live fish and produce frozen fillets. These two parts of the industry are highly integrated, both legally and commercially. Legally, the farmers and the processors are linked through common ownership. To the best of my knowledge, nearly every catfish processor is farmer owned, either by individual farmers or a farmer co-op. Even Southern Pride, which is considered one of the more independent processors, is owned by a large catfish farmer.

The commercial link is just as strong. Farmers depend on the processors to buy their fish. The processors depend on the farmers for their raw material supply. Almost all catfish is sold to processors who don't process anything else. Catfish farmers and processors are completely interdependent.

The industry accounts for a very large share of economic output and jobs in the main producing areas, to include the delta region along both sides of the Mississippi River, the area near the Alabama and Mississippi border. Most of the catfish farmers and processing plants are located in these economically depressed regions. When we consider the added jobs created by feed mills, equipment suppliers, fish harvesters, haulers, other vendors, it is clear that the industry plays a vital, important role in the health of small town and rural communities in Alabama, Mississippi, Arkansas, and Louisiana. Taking acreage out of production or shutting down processing plants has a devastating effect on our local communities.

Fish are transported live from the pond to the processing plants, and most plants are, therefore, located near the farms where the fish are processed. In addition to the high degree of farmer/processor integration, this proximity means that market information is quickly transmitted throughout the industry. For example, when import competition forces Southern Pride to lower our frozen catfish fillet prices and then reduce the price that we are able to pay for live fish, farmers throughout the area rapidly learn of the new price pressure.

Frozen catfish fillets have been the largest volume product for U.S. processors, to include Southern Pride. Frozen fillets account for between 40 and 50 percent of total sales of all processed catfish products. It is because the frozen fillet market is so important that the declines in the frozen fillet price have driven declines in the pond bank price paid to the farmers.

It is also important to understand that frozen fillets are different from fresh fillets, and the markets are quite different. First, frozen and fresh fillets are quite distinct products. Frozen fillets incur the additional processing step of being individually quick frozen, or IQF, in spiral freezers, large and expensive pieces of equipment that are not required for fresh fillet production. The IQF fillets are then packed in 15-pound boxes and can be stored in inventory until sold. The shelf life for IQF fillets is approximately six months. Fresh fillets, in contrast, are produced to order, packed in ice in 10- to 30-pound boxes, and shipped shortly after they are produced. Their shelf life is only 10 to 14 days.

Frozen and fresh catfish fillets are also sold by and large to different types of customers. Frozen fillets are sold primarily to food service distributors and large restaurant chains. Food service distributors then distribute the frozen fillets to institutions and restaurants. Large restaurant chains like Red Lobster, Cracker Barrel, Shoney's also buy a significant portion of our frozen fillets. Fresh fillets are principally sold to retail stores, grocery chains, some of which also purchase a small amount of frozen fillets sold.

The pricing is also so different for frozen versus fresh fillets. IQF fillets are sold primarily on a spot basis. The customer calls up and places an order for a certain quantity of fish at a negotiated price. Pricing on fresh fillets, however, is now more typically contract based, and we agree on supply contracts for a specific quantity at a set price over a period of time with retailers such as Win Dixie or Kroger.

In the sample price list that we have submitted with our questionnaire response you will notice that the products listed are IQF products, frozen products. Fresh fillets are not included in the list because sales of fresh products are more often longer term contract prices not subject to the changes reflected in the changing price list. The note at the bottom of the price list concerning fresh fillets is for occasional spot customers who may seek fresh product on a spot basis.

Food service customers, who buy the bulk of frozen fillets, do not want and cannot handle fresh fillets. These customer are price driven first and foremost. Similarly, fresh fillets' customers typically do not want frozen product. To these buyers, while price is certainly important, other factors such as timely deliver and quality also come into play.

To understand the frozen fillet market, there are a few important things to keep in mind. Frozen fillets are a commodity product. We at Southern Pride seek to produce the highest quality product and believe that our fillets are superior. I'm sure that my domestic competitors feel equally strongly about their product, but frozen catfish fillets are essentially a commodity product, and they are purchased primarily on price.

The commodity nature of the product can be seen in two ways. First, Southern Pride, like many of our competitors, purchases frozen fillets from other processors when we need particular sizes that we might not have on hand. While these volumes generally are not significant, they do reflect the fact that our fillets must be substituted with fillets processed by another processor.

Second, while long-term relationship, supplier reliability, and product quality are important, IQF fillets are sold primarily based on price. If a customer consistently can get cheaper frozen fillets from someone else, then the odds are that they won't be your customer for long or could cut back his purchase significantly. As imports from Vietnam have increased, this is exactly what has happened to Southern Pride's sales to several large customers, and to avoid losing our sales to our customers, over the past couple of years we have been forced to steadily drop our price.

As to other factors that might offer us some protection from the low-priced imports, I only wish I could point to some. With respect to product quality, the Vietnamese product is certainly acceptable, to the point that it has been substituted on a broad basis for our frozen fillets. I know for a fact that some of our former and current customers have substituted basa and tra fillets for our frozen catfish fillets. We have also purchased samples of Vietnamese fillets and understand how customers have been able to substitute this product for our own.

On the supply side, the very large volume of imported basa and tra fillets means that U.S. buyers have been able to secure a steady and significant supply of Vietnamese fillets. Indeed, the large imports totaling well over 17 million pounds last year means that Vietnamese producers can meet the volume requirements of any U.S. customer. Since the product is frozen and has a six-month shelf life, importers and distributors can stock the imported product just as we stock U.S.-produced fillets. In this way the Vietnamese exporters have been able to offset the proximity-to-market advantage that you might expect U.S. producers to have.

I want to talk briefly about the impact that Vietnamese imports have had on our company and on our industry. IQF fillets are Southern Pride's largest volume product and historically account for a large share of our total revenue and profit. I believe that many, if not all, domestic processors also depend on their IQF fillets for a large share of their revenue and income. This is why the imports for frozen fillets from Vietnam have hit us hard and are threatening to cause additional significant injury to our company and to the entire domestic catfish industry.

We have felt this impact in several ways. First, the steep drop in frozen fillet prices from $2.82 in 2000 to $2.41 by the end of 2001 has forced us to lower the price we can pay our farmers for their fish. We have not done this lightly, but the fish is the most important cost element in the production of frozen fillets. The farmers have felt this first impact as we have struggled to keep our prices competitive with the Vietnamese basa.

Second, we have lost significant frozen fillet volume as the massive quantity of Vietnamese product has pushed its way into our markets. The loss of volume means loss of efficiencies as filleting and freezing equipment are not fully utilized. This impact has been felt especially toward the end of last year and into 2002.

Third, in addition to the impact caused by low prices and reduced efficiencies, our profitability, particularly this year, has been hurt through lower production yields. We are getting record-low yields on our processing operations because we are receiving thinner fish from our farmers. Due to the financial pressures caused by low pond bank prices and the lack of capital, as banks have cut back on loans and lines of credit, farmers have understandably been trying to save money by feeding less. This has had a substantial impact on our profitability.

For example, Southern Pride has the capacity to process approximately 100 million pounds of live fish per year. That two percent yield reduction means that we have lost two million pounds of finished product for the same production cost. This results in a direct reduction in our revenue and operating income at Southern Pride. As farmers continue to face cash problems from low prices, they will cut back even more on feeding, and processors will take a direct hit.

The reduction of farm feeding and other cutbacks that impact farm yield are, however, not the biggest threat. Now many farmers are selling their fish at or below cost, and they cannot continue to do so for much longer. We are on the verge of losing substantial numbers of farmers. This will result in increased pond bank prices for the remaining farmers, leaving processors to compete with unfairly priced Vietnamese imports while our costs are going up.

This could be the end of us and the industry we have all created together. I'm here today because we at Southern Pride are very concerned that the situation that has so rapidly deteriorated since the middle of last year will only get worse.

I finally want to briefly discuss the labeling laws that you have heard about. As I mentioned a few moments ago, the importers of Vietnamese basa and tra have been able to dramatically increase their volumes because they have ridden the coat tails of our industry's successful marketing campaign, and they have identified their product in a way clearly designed to confuse the buyers in the use of names and symbols suggesting that the product is the same as U.S. farm-raised catfish. Some of the imported fish has been labeled Cajun Delight, Delta Fresh, for example.

The practice of mislabeling of seafood is not a new phenomenon. It has been an issue of our industry for many years. The labeling of Vietnamese product has just been one episode. The labeling laws passed recently will prohibit the Vietnamese fish from being labeled and offered as catfish, and that will help to ensure that purchasers and consumers are not misled.

However, the fact of the matter is that the horse is out of the barn. Sellers of the Vietnamese product have already had more than two years to offer it as a cheap substitute for U.S. farm-raised catfish frozen fillets. Our largest, most price-sensitive customers, the food service distributors and restaurant chains, have bought this product and have made the substitution. With a price that continues to be well below our own, they can continue to substitute it, no matter what the importers call it. The availability of this substitute product will continue to put downward pressure on our frozen fillet prices.

We also believe that the very large industry that has quickly been developed in Vietnam has a tremendous incentive to continue shipping massive quantities to the United States. For the time being, there is little or no market here for basa or tra, as such. They may develop a basa market, and we hope they do, but we do know from many years of seafood market experience that development of a market for an unknown seafood product takes time, and not just a few months. The only way they continue to ship any significant volumes over the next few years is to continue to sell to our customers, displacing our product, and we have every reason to believe that they will continue to do that.

We cannot stand by and watch this happen. Our farmers are on the brink of collapse. Processors' profitability and volume has begun to deteriorate rapidly. We have addressed unfair labeling, but we need the help of this Commission to address the unfair price that continues to impact our market. Thank you.

MS. SLATER: Thanks, Randy. I would like now to turn to Mr. Bill Dauler of Consolidated Catfish Company.

MR. DAULER: Good morning. My name is Bill Dauler. I'm vice president of sales and new business development at Consolidated Catfish Companies, also known as Confish. We are based in Isola, Mississippi, and I've held this position for the last 11 years and have worked in the catfish industry since 1975. Confish is a company that's wholly owned by 134 individual catfish farmers.

In the past couple of years, imports of Vietnamese frozen basa fillets have had a serious, negative impact on Confish and the U.S. catfish frozen fillet industry. At Confish we have lost significant sales volume and revenue on our catfish fillets to the Vietnamese product. Some of our key customers have switched to selling the Vietnamese basa and no longer buy frozen catfish fillets, or they have lowered the quantity and the price of the frozen catfish fillets they purchase from us as a result of the Vietnamese product, drastically lowering our profitability.

For example, in 2000 Confish lost one of our biggest customers, Picadilly, which is a national restaurant chain, and they switched to Vietnamese basa. Picadilly was the largest purchaser of two- to three-ounce shank fillets in the market. We used to sell approximately 20,000 pounds of fillets to Picadilly every week, but once they started buying Vietnamese basa, we lost the entire account.

In addition to these lost sales, the Vietnamese basa has also negatively impacted us in a number of other ways. The significant lower price of the frozen basa fillet, for example, has driven down the price for all frozen catfish fillets, and these lower frozen catfish fillet prices have significantly affected our bottom line.

Last year, our frozen fillet business was operating at a loss, and this year circumstances have gotten much worse. Lower frozen catfish fillet prices have also forced us to reduce the price that we can pay to our farmers for live catfish, and these lower live catfish prices have a devastating effect on our farmers.

In response to these lower prices, farmers have tried everything to lower their costs. Because feed is the largest cost input in raising catfish, in order to save money farmers have started cutting back on their feeding of fish. As a result, the live catfish that we are receiving this year are yielding less meat. In fact, we are now getting the lowest yield that I have seen in the industry for 25 years. For example, a 20-ounce whole fish, which normally yields seven ounces of fillet meat, recently, however, the same size whole fish is only yielding 6.6 ounces of meet. This two percent yield loss increases our cost, and with the continuing pressure in the frozen fillet market, our bottom line is directly affected.

Moreover, if these trends continue, our farmers will go out of business. The farmers provide the live fish, and the absolute dependence of the farmers on processors to process the fish; one cannot survive without the other.

Therefore, unless something is done about these unfairly traded Vietnamese frozen basa fillets, the ultimate outcome will be disastrous for the entire U.S. catfish industry.

MS. SLATER: We're going to hear next from Mr. David Pearce, who operates a large catfish farm in Alabama.

MR. PEARCE: Good morning. My name is David Pearce. I'm a catfish farmer from Browns, Alabama. I've been in the catfish farming business for 31 years, and I'm a past president of Catfish Farmers of America.

Mine is one of about 1,200 catfish farming operations in the United States. I am pleased to be here this morning to talk with you about the situation in our industry and what is happening to us and other catfish farmers as a result of the flood of frozen basa and tra fillets from Vietnam.

Catfish farming is the largest aquaculture industry in the United States. Catfish are raised in man-made ponds from fingerlings that are typically purchased from fingerling producers. In the United States farm-raised catfish are fed a high-protein feed made primarily from corn and soybeans.

The feed and capital needed to build and maintain the farm are the largest cost components of catfish farming. It takes 18 to 30 months to grow a catfish to food size. Most farmers stock additional fingerlings each year so that there will be a constant supply of food fish for harvest.

When my family began catfish farming 31 years ago, the catfish industry was relatively new, and the market for farm-raised catfish was a fraction of what it is today. Over the years, U.S. catfish farmers have literally built an industry pond by pond and built a market for the product produced in those ponds.

Since 1986, catfish farmers alone have spent over $55 million promoting and building the demand for farm-raised catfish. Processors have spent even more. Our efforts have been extremely successful, and U.S. farm-raised catfish now has name recognition and a vastly expanded market of which we are very proud.

My catfish farm has expanded with the industry. From our original 40 acres of ponds in 1971 we have grown to 1,425 acres. Unfortunately, the most recent expansion occurred in 2001 based on investment decisions made the previous year. Our most recent investment, which seemed absolutely prudent at the time, given the continuing expansion of the catfish market, has turned out to have been unfortunate only because of the unexpected flood of imports from Vietnam.

All catfish farmers depend on one or more of the approximately 24 U.S. catfish processors to move our fish to market. These processors, most of whom are wholly or partially owned by farmers, were created for the sole purpose of producing high-quality processed products from the fish we are raising.

Healthy, competitive catfish processors are essential for the catfish farming industry. Almost all of the fish we produce is sold to catfish processors. If the processors cannot sell processed products, we cannot sell them our fish. This is particularly the case for frozen fillets, which have been the largest, fastest growing, and most important processed product for our industry. Since July of 2001, processors have not been able to buy as much fish, and the situation has been devastating for farmers.

In the case of my farm, the processors that have been buying most of my fish were buying 180,000 pounds each week. In the summer of 2001, they cut back to half that amount. Fish that were growing in the pond didn't have any place to go. By the end of 2001, our inventories were well above the previous year's level, and we were operating at a loss. For the year we moved 2.5 million pounds less than we had planned.

In 2000, we averaged more than 70 cents per pound for our fish. Last year, we averaged less than 62 cents per pound. Our pond bank price currently today is 50 cents a pound. It's been over 20 years since the price was that low. We are selling less fish at the lowest price we have seen since the early eighties, the reason being that our processors are able to move less product and are being forced by Vietnamese competition to charge lower prices for the frozen product they sell.

The impact on our bottom line is more than just the impact of the lower pond bank price for our fish. When we cannot sell our fish as they reach optimum processing size, they stay in the pond and consume more feed. After the fish reach optimum size they must still be fed until they are sold, and the feed efficiency will then decrease, growing fewer pounds of fish for the additional feed fed. In other words, we are putting in more feed to get less return from each additional pound of feed fed. Our yields per acre will also decline. Also, when fish remain in the pond for longer than optimum time, mortality rates increase, and other problems occur leading to increased costs.

Some farmers feed their fish less to save money and wind up with poor yields by doing so. On the other hand, if the processors cannot buy the fish, farmers' options are very limited. For that reason farmers have had no choice but to take the lower pond bank prices that processors have been forced to offer because it is important to us that they be able to sell product even at lower prices driven by Vietnamese competition. Their success in moving product is the key to our ability to be efficient and generate revenues. And I can tell you, as a member of the board of a local bank that has loans outstanding to a number of catfish farmers, many catfish farmers are bumping up on their credit limits and having trouble making ends meet. They are having a hard time feeding their fish and their families.

I hope this Commission will allow this investigation to continue so that we can address the problems caused by these very cheap imports and once again have the opportunity to make a reasonable return on the catfish farms in which we have invested so much time and money. Thank you.

MS. SLATER: We're going to next hear from Mr. Charlie Pilkinton.

MR. PILKINTON: Good morning. My name is Charlie Pilkinton of Pilkinton Brothers Catfish Farm in Columbus, Mississippi. I've been a catfish farmer since 1994, and I'm here today to describe how Vietnamese basa has affected my farm and others in the industry. Many of us are on the verge of bankruptcy and may lose everything we've worked so hard to build.

My brother and I became catfish farmers in 1994. We secured a loan from a local bank to buy the land and equipment for the farm. By 1999, we had a total of 315 acres. We sell all of our live catfish to one processor. In 1999, market conditions for U.S. farm-raised catfish were good, and the processor told us that he intended to expand his production capabilities for frozen catfish fillets.

As part of its expansion, the processor asked us if we wanted to increase the amount of live catfish we provided to him. We agreed and secured another loan in 1999 to purchase and build an additional 245 acres of catfish ponds. We finished building these additional ponds in the summer of 2000 and were able to stock them with fish by the spring of 2001.

However, by that time the Vietnamese basa had already started taking a serious effect on the U.S. catfish market. Because the Vietnamese fish, which was being marketed and sold as catfish, was selling for more than a dollar less than U.S. frozen catfish fillets, our processor was not able to sell as much of its product as it intended when it first planned expansion. Therefore, in the fall of 2001, the processor told us he would have to lower the amount of fish that he had originally agreed to purchase from us.

In 1999, when we first talked about the expansion, the processor told us that he would purchase over five million pounds of live catfish from us every year. In the fall of 2001, the processor told us that he would have to lower that quantity to three and a half million pounds a year. This drop in the quantity of live fish that we sell has hurt our farm tremendously. Therefore, we are spreading significant fixed costs over a much smaller quantity of fish.

In addition to the quantity of fish, the Vietnamese basa has also seriously hurt the price of our catfish. In order to compete with the Vietnamese basa processors, we have had to lower the price of frozen fillets, which has affected the price that they can pay farmers for live catfish. In the catfish industry farmers depend on the processors for their survival because just about all live catfish is sold to processors. If a processor went out of business, farmers would be out of business, too. This is why most processors are owned by farmers and why lower frozen fillet prices lead to lower live catfish prices. Farmers cannot afford to have processors go out of business, and so the processors lower prices have been passed on to the farmers.

As the Vietnamese has pushed frozen fillet prices down, the effect on live catfish prices has been tremendous. Live catfish that used to sell for 80 cents a pound fell to 55 cents a pound by the end of 2001. At that price we were losing money, along with most other farmers. We have done everything we can try to cut costs. Because feed is our most expensive input, we have had to reduce the amount of feed we give the fish. As a result, our fish started to lose some of their meat.

We are also suffering financially. We went from a net income in 2000 to a net loss in 2001. We currently have a lot of debt and have recently tried to renew our $1 million line of credit with the bank. Because of our financial situation, I'm not sure that we will get it. Previously, the bank accepted the fish as collateral, but now because the value of the fish has declined so much, the bank is requiring that we put up other assets as well. If the bank denies our request, my brother and I will have to shut down our farm.

It is not just our farm in trouble. Just about every other catfish farmer I know is in a similar situation. Unless something is done to address the situation, the whole catfish industry may collapse. I thank you for your attention.

MS. SLATER: We're now going to hear from someone from a slightly different part of the country. Mr. Klett is going to discuss some of the economic issues.

MR. KLETT: Good morning, Mr. Featherstone, members of the staff. My name is Daniel Klett. I'm an economist with Capital Trade, Inc., testifying on behalf of the U.S. catfish industry. My testimony this morning will focus on certain causation issues relevant to the Commission's determination of whether subject imports of frozen fish fillets from Vietnam have caused material injury to the U.S. industry, which includes both processors and growers. I will be referring to eight exhibits during my testimony.

There are four key conditions of competition that underpin my analysis. First, the U.S. industry is comprised of both catfish growers and processors. Frozen catfish fillets are the single largest catfish processed product, exceeding volume for the next largest processed product, fresh fillets, by a factor of almost two to one. Catfish growers have nowhere else to sell but to processors. Accordingly, a reduction in prices for frozen catfish fillets results in reduced prices paid by processors to growers.

As you can see from Exhibit 1, there is a very close correlation between processors' prices for frozen catfish fillets and pond bank prices for fresh catfish. Statistically, the correlation coefficient is .97.

Second, as discussed by our industry witnesses, competition from frozen fish fillet imported from Vietnam has been primarily on the basis of price. Frozen catfish fillets are concentrated to food service distributors and national restaurant chains, which are sophisticated and knowledge, price- and cost-conscious buyers.

Third, this is a growth product and market, with the growth in large part the result of significant investments made by the U.S. industry to promote catfish to U.S. consumers. From 1990 to 2001, U.S. apparent consumption of frozen catfish fillets grew at an annual rate of eight to nine percent, and per capita consumption has grown at an average annual rate of seven to eight percent. Consumption of other processed catfish products also has grown but not as fast. Also, this contrasts with U.S. per capita consumption growth of less than one percent annually during the 1990's for other fresh and frozen fish products, according to USDA data.

Fourth, the relevant market for purposes of evaluating causation at the first level of competition is frozen catfish fillets produced in the United States and imports of frozen fish fillets from Vietnam known as tra or basa. Subject imports from Vietnam have been marketed and sold in the United States as catfish. Even after legislation banning the labeling of subject imports as catfish, frozen fish fillets from Vietnam continue to enter the U.S. market and are sold in competition with U.S. processors of frozen catfish fillets.

As shown in Exhibit 2, frozen fish fillet imports from Vietnam also enter under three other HTS categories, which we believe are largely, if not exclusively, comprised of subject products. Imports under all four HTS categories are significant, and imports under the three that are designated as frozen fish fillets not elsewhere specified accelerated in 2002.

I now want to discuss volume effects. Exhibit 3 is marked share trends from 1999 through January-April 2002. Regardless of which HTS category or categories are used to measure subject import volume, and you can see that the red line is the single HTS category, and the lighter colored line are the combination of the four HTS categories, the market share increase is significant, from two to six percent of the market in 1999 to at least 12 percent and probably as high as 20 percent in 2001. Market shares declined somewhat in the first four months of this year, but this is largely a seasonal factor.

I think it is also useful to present the volume of subject imports on a live-weight equivalent basis because volume and market share losses by processors translate directly to reduced purchases of live-weight catfish from the growers. As shown in Exhibit 4, the live-weight equivalent volume of subject imports, using a yield factor of 36 percent, results in an effective loss of live-weight production by U.S. growers of over 80 million pounds. Consequently, while catfish sales to processors grew at an annual average rate of six percent from 1990 to 1999, growers' sales to processors were essentially flat in 2000 and 2001, according to NAS data. That's not shown on this graph, but that's from USDA statistics.

Exhibit 5 shows frozen catfish fillet shipments, subject imports, and apparent consumption from 1990 to 2001. Data are for a period of time longer than the period of investigation because I think it is important to understand longer term demand trends. The exhibit shows that U.S. apparent consumption has risen almost continuously since 1990, with a brief interruption in growth only in 1994. Prior to 2000, U.S. processors' sales of frozen catfish fillets closely tracked overall U.S. demand. However, in 2000 and 2001 subject imports increased significantly and effectively captured the entire growth in U.S. market demand.

Respondents cannot claim that they generated the demand growth in 2000 and 2001. As you can see from the graph, U.S. demand was growing even before subject imports entered the market in any significant way, and demand growth in 2000 and 2001 was a continuation of this trend. 2000 and 2001 differ from prior years in that U.S. processors of frozen catfish fillets experienced reductions in production, sales volume, and employment, not the increases that are in line with demand growth as they had in prior years.

Like any agricultural product, catfish is subject to cyclical ups and downs -- from supply-demand imbalances. For example, as shown in the same exhibit, U.S. producers experienced a decline in frozen catfish fillet shipments in 1994. However, while the data are not shown on the graph, U.S. producers also experienced declines in their fresh fillet sales and other frozen product sales in this year, and prices did not decline for either frozen catfish fillets or food-size catfish. I've looked at pond bank prices going back to 1997. The price levels experienced by U.S. growers since 2000 of below 60 cents a pound was experienced by growers in only isolated periods of time, for example, 1982 and late-1991, early 1992, more than 10 years ago.

2000 and 2001 differ from past cycles in another respect. As you can see from Exhibit 6, U.S. producers experienced greater reductions in the price of frozen catfish fillets than their other processed products. From January 2000 to May 2002, the prices of frozen catfish fillets decreased by 43 cents a pound compared to price decreases of 18 cents per pound for whole-dressed frozen catfish and a price increase of three cents per pound for frozen nuggets.

Furthermore, as shown in Exhibit 7, U.S. catfish processors' frozen catfish fillet shipments declined in 2000 and 2001, but for other products shipments remained flat or increased slightly where there were no imports from Vietnam. The decline for frozen catfish fillets is even more anomalous, given that historically it has been the growth driver for processed catfish products overall.

Regarding price effects, Exhibit 8 shows the volume growth of subject imports from Vietnam and the associated decrease in the average unit value of subject imports. Because subject imports are marketed and sold in direct competition with U.S. producers, it is basic economics that these volumes and prices must have contributed materially to the depressed price levels experienced by U.S. processors for frozen catfish fillets.

I believe the questionnaire data will show that even with price declines for frozen catfish fillets, U.S. processors overall did not experience significant declines in their operating profit margins through 2001. This is because through this year a large portion of price declines for frozen catfish fillets were passed back to catfish growers through lower prices paid for food-size catfish.

Accordingly, and in my testimony from here on in I'm not referring to any exhibits, accordingly, I expect you will see from catfish grower questionnaire responses that they took the brunt of the adverse effects with respect to the cost-price squeeze and declining profitability. For example, their feed costs did not decline in 2001 to offset the reduced pond bank price. However, the low pond bank prices ultimately will flow back as adverse effects to catfish processors. As catfish growers face prices below their break-even costs, the first response is an attempt to reduce cash outflows, the largest of which is expenditures on feed. A reduction in the level of feed given to catfish results in thinner and lower yielding catfish. Processors have experienced over the last year a reduction in their yields, which translates to an increase in their unit production costs and a decrease in their unit profit margins.

As pond bank prices remain below break even, there also will be a reduction of water acreage and food-size catfish production. This reduced supply of catfish ultimately will put upward pressure on food-size catfish prices to processors, who continue to face pressure from the presence of low-priced frozen fish fillets from Vietnam.

Thank you. That concludes my testimony.

MS. SLATER: Thank you, Dan. Mr. Featherstone, could we have a time reading on our remaining?

MR. DEYMAN: You have 15 minutes remaining.

MS. SLATER: Thank you, Mr. Deyman.

While we will, of course, discuss many of the legal and economic issues in our post-conference brief, I wanted to take the opportunity this morning to review with you some of the key issues that we believe the Commission needs to pay particular attention to in this investigation.

First, as you know well, the legal standard for preliminary injury determinations in the antidumping cases is whether there is a reasonable indication that a domestic industry is materially injured or threatened with material injury by reason of the unfairly traded imports. The Commission must issue an affirmative preliminary determination unless the record as a whole contains clear and convincing evidence that there is no material injury or threat of injury, and no likelihood exists that contrary evidence would arise in a final investigation.

In this case the sharply increasing volumes of the subject imports in a market for a commodity product, the rapid deterioration of the farm sector profitability, the low and declining prices of imports, the rapid growth of import market share, and the recent further impacts on frozen fillet processors as prices continue to deteriorate make clear that the reasonable indication standard is met in this case.

I want to turn briefly to talking about the like product issue. While we will be pleased to answer any questions, I would like to note that the domestic like product in this case is properly defined as frozen catfish fillets. In every case in which the subject merchandise has been either fresh or frozen seafood products the Commission has defined the domestic like product to include only fresh or frozen products, respectively. The Commission has clearly recognized the distinction between fresh and frozen seafood products and has repeatedly found this distinction suggests limited interchangeability, dissimilar distribution channels, and pricing differences. This is certainly the case with respect to frozen and fresh catfish. In addition, frozen fillets are quite distinct in characteristics and uses from other frozen products, and we will lay that out for you in great detail in our brief.

Third, we believe, as you may have surmised, that the Commission should exercise its discretion in this case to include within the domestic industry both processors producing frozen catfish fillets and the domestic growers of catfish. 19 U.S.C., Section 16774(e), allows the Commission in a case involving a processed agricultural products to include the growers of the raw product if certain criteria are satisfied. In this case the criteria most clearly are satisfied.

First, there is a continuous line of production from the live catfish to the production of frozen catfish fillets. Under the statutory definitions of continuous line of production, first, the raw agricultural product, the live catfish, is substantially or completely devoted to the production of the processed agricultural product. Frozen catfish fillets accounted in 2001 for about 54 percent of the total live catfish weight processed, a percentage that exceeds the percentage of the raw product moved into the processed product in the recent raspberries investigation. In addition, in this case, as in raspberries, this percentage increases significantly when the live fish not suitable for processing into fillets are removed from the calculation. We will provide you that data and those calculations in our brief.

In terms of the secondary statutory criteria for continuous line of production, whether the processed product is produced substantially or entirely from the raw product, there is no question that frozen catfish fillets are produced substantially from the live catfish produced by farmers. Not only is there a continuous line of production, but there is clearly a coincidence of economic interests between the farmers and processors who produce frozen fillets.

We will set out this information relevant to the statutory tests in the brief, but suffice it to say, there is a very high correlation, as Mr. Klett mentioned, between pond bank price and the price of frozen fillets. You've heard the explanation for that high correlation in the testimony presented this morning. There is no question, furthermore, that the value of the live catfish represents a significant portion of the value of the frozen fillets.

We submit this is clearly a case in which the

Commission should exercise is discretion to include the growers in the domestic industry. The high degree of legal and economic integration of catfish farmers and processors is an additional factor supporting the need for the inclusion of the growers in the industry. Indeed, given the structure and operation of this industry, if the growers are not included, the Commission will not be able to fully take into account "the special problems" it has recognized with respect to determining whether an agricultural industry is injured.

Fourth, it is important to recognize the commodity nature of frozen catfish fillets. Frozen fillets, much more so than the fresh catfish product, are traded on the basis of price. Frozen fillets are largely sold to food service distributors, the Syscos, the Alliance, the companies which you are all familiar with that are in the business of dealing large volumes of food to institutions and restaurants, and also to the large restaurant chains, both customers for whom price is the critical purchasing factor.

Let me turn briefly to some traditional indicia of injury, some of which Mr. Klett has reviewed, but I want to take a slightly different tact on some of this. With respect to volume, you've heard about today already several times the sharp increases in volumes. Many of the analyses we've presented to you in the petition and some of the numbers we've used today conservatively rely only on the volumes entered under the HTS category for frozen catfish fillets. However, the subject merchandise, the frozen basa and tra fillets that are the subject of this investigation have been all along and are being increasingly entered under a variety of other HTS categories, particularly two basket categories for frozen fish fillets and frozen fresh water fillets.

We don't have access to the information, of course, that would tell us how much of that is basa and tra. We believe that most or all of the Vietnamese product is basa and tra because we, number one, know of no other fish that's being exported in any quantity from Vietnam that would fit into the category. Also, we believe, based on other information we've seen coming from the Vietnamese which characterize the quantities of their exports, that all of this product is basa and tra.

The devastating impact that these imports have had can really be fully understood only when you look at the total quantity. We urge the staff and the Commission to make very effort to define the import levels as accurately as possible.

With respect to market share, as we've already noted, these have risen rapidly. If we only look at the imports under the frozen catfish fillet category, we see the

Vietnamese frozen fillets' share of the market going from, as I mentioned earlier, under two percent to almost 13 percent in 2001. And if you see our petition at Exhibit 36, we have market share calculations set out there for you.

But if we look at the imports from Vietnam under all of the relevant HTS categories, we see market share going from about five and a half percent in 1999 to over 20 percent of the frozen fillet market in 2001. Now, interestingly, the 20 percent figure is the one that has been publicly cited numerous times by Vietnamese representatives in discussing their shipments of this merchandise to the United States and the market share, again, a very strong indication that all of these frozen fillets entering under these tariff categories is subject merchandise. The type of rapid market share growth in this type of market, from five percent to 20 percent or from three percent to 13 percent, can only be achieved through price.

With respect to pricing, we believe the Commission's data will show substantial underselling by these imports. The underselling has been certainly experienced by this industry firsthand, and it's suppressing the frozen fillet price to unprecedented levels. Thirty million pounds of low-priced frozen fillets from Vietnam -- 30 million pounds is equivalent to roughly, I'm told, 90 million pounds live weight of fish. Think about that for a minute. How could it not have this price-suppressive effect?

Two more quick issues. We think that the record of this preliminary investigation is going to provide you substantial evidence of material injury and of threat. It's critical that in analyzing the industry that this Commission take into account the operation of the industry and the relationship between the processors and the farmers in order to understand what has happened. The farmers, many or most of whom have an interest in the processing plants to which they deliver their fish, realize that their processors must remain operational in order for them to have an outlet for their fish.

The processing plants, therefore, are set up by the farmer owners and by the processors themselves to maintain a level of return required to keep them operational. This, by the way, will happen when times are good, and they will do so when times are bad. In good times the processors will return the bulk of the profits to their farmer owners and keep only an operational level, and the same thing happens in bad times, meaning that the farmers will feel the pain first when times are hard, and they are feeling it now to extremes in ways that haven't been seen in this industry in its history.

The fact that some, although not all, of the processors have maintained an operational level of profitability in this distressed time must be understood in this context. However, we urge the Commission to also look at the interim period data for the processors. That interim period data, which I don't want to discuss here publicly, is going to show you that these processors are collectively and individually now beginning to show the impact of these continuing import volumes because they have gotten to the point where they cannot lower their input prices anymore, or they will lose their farmers.

Let me finally turn to the important issue of threat. Certainly, there is every reasonable indication of present material injury in this case, but there is also a very clear indication of threat and of further injury. Each of the threat criteria presented by the Commission provides a clear indication, and we're going to go into some detail on that in our brief, the United States is the largest market for this Vietnamese basa and tra, and it accounts for about half of Vietnam's exports of this product. The volumes have built up quite rapidly, continuing into the most recent period. And, again, when you look at all of the HTS categories, you can see there has been no cessation. There has been no slowdown. There may have been a shift in the classifications. It's the same product, and it's going to the same markets.

The capacity and production level of this product in Vietnam, and I'm hoping when we get questionnaire responses, which, of course, we have not seen at this point, we'll have some information from the exporters, but we know from some firsthand experience and some careful examination of the Vietnamese industry the industry has grown quite rapidly and is quite large. The extent to which this product has targeted the United States market, along with statements from the Vietnamese exporters themselves, make it clear that this product is not going to slow its assault into the United States and into the U.S. frozen catfish industry.

As you've heard some of these guys say this morning, and we'll certainly be glad to take your questions on it, this product has been sold as frozen catfish fillets. It has been sold to the largest customers who are buying it and substituting it for frozen catfish fillets, and they can and have continued to do that, notwithstanding the change of name. And the reason they can do that, as someone explained very clearly yesterday, the flavor profile of this fish is similar enough that it continues to be substituted regardless of name. And as long as we have 30 million pounds of frozen fillets a year coming across the border into this market with no market of its own, this is where it's going to continue to go.

In conclusion, the industry before you has clearly been materially injured by tremendously increased imports of frozen catfish fillets, frozen basa and tra fillets from Vietnam, imports that have targeted the farm-raised catfish market developed by the domestic industry and which continues to be sold in that market.

We thank you for taking time to listen to us today. I would like to reserve whatever minute or two I might have left, and we'll be happy to answer your questions. Thank you.

MR. FEATHERSTONE: Thank you, Ms. Slater, and to all of the witnesses for your testimony. We will accept the collection of eight exhibits from Mr. Klett as Collective Conference Exhibit 1. Mr. Reavis?

MR. REAVIS: Because of a very competent questionnaire response, at least from the processors, and from other sources of information, we have a lot of good information in this case, so I'm not going to belabor you with a lot of questions, but I did jot down a few things I would like to explore. This is primarily for the processors. Are your sales of the frozen fillets ever coordinated with your sales of the frozen whole fish nuggets and steaks, other types of frozen catfish products that you sell? By that I mean do you bargain for price one for the other to the same buyer?

MR. RHODES: They are not interchangeable. Each item is independently bid or asked for on a spot basis. Does that answer your question correctly?

MR. REAVIS: So you're never in a situation where you can reduce the price on the fillets by increasing the price on, say, the whole fish or the steaks to the same buyer if they buy them completely independently.

MR. RHODES: Yes. I can say that's right. That's correct.

MR. REAVIS: Okay. Fine. Thank you. On the issue of the regulations for the new labeling, do these regulations apply at all levels of buying from the producer to the retailer? For example, is a restaurant still allowed to say catfish if it wants to?

MS. SLATER: There are actually three types of provisions that are relevant, and maybe I can just recap them if that would be helpful. One is there was a provision in the FDA appropriations bill that deals with the naming of the fish as it enters. That really applies only to the labeling for entry purposes. The second is one that has to do with country-of-origin labeling, which actually will not be effective until 2004, if I'm not mistaken, and that country-of-origin labeling does not go down, as I read the statute, to the restaurant level.

The most important labeling change has been the third provision, which is actually an amendment to the FDA law that deals with all kinds of branding and labeling, and there is a provision which says you may not label something as catfish unless it is from this particular U.S.-raised species. That does apply all the way through, and I will say in theory, applies to all labeling and branding of food products.

I will tell you two things. One is it's important to realize that from the perspective of the buyers who are purchasing this product, now that they are convinced it can be replaced -- it can be substituted for the catfish, they may do that without calling it catfish at this point, neither the importers who sell it to them nor in offering it to their customers. Whether the customers all the way down to the restaurant level will stick with the notion of no longer labeling it catfish I think is a whole other issue. The FDA has publicly stated unfortunately that it considers this to be a very low enforcement priority, and that is a big concern obviously of the people sitting at this table, and they can talk to you more about what they have seen and haven't seen in terms of impact.

MR. REAVIS: Have you noticed any change in the impact of the Vietnamese product in the -- what is it now? -- six months since the regulations went into effect?

MS. SLATER: Well, I can tell you that we haven't seen the imports decline with the import data that we have. I can let these gentlemen maybe address it in terms of the market experience that they have had.

MR. WALKER: I am Danny Walker, and I'm CEO of Heartland Catfish Company. We are one of the 24 processors in the industry. We have continued, as she said, to see an increase in the product coming overseas into the markets. Out there on the marketplace that product is still coming to the users that were using it previously.

I think from a standpoint of the small place that may be buying two or three boxes a week of product, they may have seen this under a different label a few months ago. They found out that it would substitute for catfish. They started using it. Now that product may come in under the name of basa. Those people at that level are not familiar with the laws and regulations, and if that salesman is going to pass that on to them at a very cheap price, they are going to save that money and continue to buy that product, and we're seeing that happen.

MR. REAVIS: As far as labeling goes, you yourself have no particular knowledge of how things are being labeled or how they are enforced.

MR. WALKER: No. To date, I have not seen basa on a menu out there in the marketplace as basa.

MR. REAVIS: Fine. Are there any other types of frozen fish fillets on the market that have impacted the industry, that is, both catfish and/or basa and tra in the last three years, for the period for which we've collected data?

MR. RHODES: No. There has not been any other species that has the same characteristics as the basa has had.

MR. REAVIS: Or that has impacted the market, taken sales away from catfish.

MR. RHODES: No, it has not. Only the basa.

MR. REAVIS: And finally, approximately how many are employed in the growing segment of the industry, just a ball park figure? Do you have any idea?

MR. WARREN: I'm Hugh Warren. I represent the Catfish Farmers of America. Generally, it's the accepted figure of around 13,000 direct employment within the industry. Of course, the significant fact, though, is where that industry is employed and the areas that have availed themselves of the opportunity maybe for their first job, I think that the demographics would say that a high percentage of the workers are only a first job. Many of them are single mothers. So that's something that we're particularly proud of. And most of the plants are union plants.

MR. REAVIS: We're just talking about the growing industry now, not including the processors.

MR. WARREN: I can hardly separate the two; it's such a continuous -- one hand holds the other.

MR. REAVIS: Okay. So the 13,000 applies to the processing industry --

MR. WARREN: Right. And also farmers.

MR. REAVIS: Okay. Thank you.

MS. SLATER: We can see, Mr. Reavis, if we can come up with that data, but generally the employment data is taken together because of the proximate nature.

MR. WARREN: If you'll excuse the interruption, I'll also add that the economic impact of that industry has a high value, as much as $4 billion of economic impact to the areas that have this catfish production.

MR. REAVIS: We can deduce that information from our questionnaire responses, but if you come up with another number, why, you can put it in your brief. I have no further questions.

MR. FEATHERSTONE: Ms. Alves?

MS. ALVES: Good morning. Mary Jane Alves from the general counsel's office. Thank you to everyone who has appeared this morning. We certainly appreciate it. You have had some very helpful testimony already this morning.

In the petition and in your testimony this morning you've been referring to U.S. farm-raised catfish. Are there any wild catfish that are harvested or processed in the United States?

MR. RHODES: No. All of the catfish that you're hearing about processed are U.S. farm raised. All of the processing plants are only farm raised.

MS. ALVES: Thank you. Mr. Rhodes, in your testimony this morning you've already given me some information about possible like-product arguments, particularly with your discussion of the fresh catfish. Mr. Reavis also asked this morning about whether or not there are other species of fish or other types of fish that may be competing in the frozen fish fillet market against the catfish. If you could elaborate on this in your post-conference brief, particularly with respect to fish such as haddock or pollock or sole or any of these other types of fish. I know that you've indicated in the petition that the Vietnamese fish at one point in time were trying to operate under the names of roughie or some of the other names, and if you could indicate whether or not there are, in fact, fish that would compete under those names against this frozen fish product.

MS. SLATER: Certainly can do that. One of the things that's important to understand, as I've recently come to understand, is that there are other white fillets, but apparently the flavor profile, and maybe you guys can talk about this -- I'm not a fish-tasting expert, but the flavor profile of farm-raised catfish is fairly distinct. The Vietnamese basa and tra fillets approximate that flavor profile, so it has been successfully substituted.

When this fish was labeled early on before it took on this labeling of the various catfish names, it came in, as you mentioned, as orange roughie and China sole. It wasn't at that point being really marketed into the catfish market, so at that point I think there wasn't so much concern. We weren't seeing very much of it show up there.

However, now that it has been sold and offered and identified in that way, I think the conviction within this industry is that even if the name is changed, it already has been identified as a substitute.

MS. ALVES: So it has more to do, then, with the flavor profile than, for example, other fish that may be white fish available at a certain pricing point.

MR. RHODES: We can take no other species and substitute other than the basa. A significant part of our business has always been the white fillet market, and that's where there has been no other substitute or no other fish that competed with that in the farm-raised industry as well.

MS. ALVES: Thank you. And you also mentioned this morning that you are going to be elaborating more in your post-conference brief about whether or not to include other types of frozen catfish products in the domestic like product.

MS. SLATER: Yes, we will do that. As Mr. Rhodes mentioned, the other frozen products -- whole fresh fish, nuggets, which are actually almost a byproduct -- it's that belly flap that's cut off to make the fillets we're all used to seeing -- these are sold to very different kinds of buyers and at very different pricing points, and they don't compete with each other; they sort of move on their own. And you can see that in the pricing data as well. We'll put that in the post-conference brief. But if you have particular questions, we can certainly answer them for you.

MS. ALVES: If I could, with respect to both these additional catfish products as well as on the fresh end, the fresh fillets, if you could tell me whether or not the same manufacturing facilities and processes and employees are being used to produce all of these types of products.

MS. SLATER: I'll start and then let them just elaborate. I understand that between fresh and frozen -- all of these products come out of the same plants. Within the plants there's significant equipment and processes that are involved for making frozen products, particularly these very -- I will tell you, having seen them -- fancy and expensive spiral freezers which are needed for the IQF. That, of course, is not at all relevant to the production of the fresh products.

With respect to frozen, we can talk a little bit about how that goes. It would have to go through the freezing process as well.

MS. ALVES: But I guess, at least at the front end of the process, everything goes through the same front end. You don't have separate machinery where you can handle only the filleting of the fresh. Presumably, you are using the same equipment at the front end. And so you have additional steps, then, for the frozen. Are there separate steps, or where would you take care of the other products, the other frozen products?

MR. DAULER: In our instance, and about everybody's, for example, my plant, about half of the product that we sell out of the plant is fresh, and the other half is frozen. The kill rooms where the products are killed and processed, you know, all of the fish go through there, and then they go into a sizing room, and from that standpoint they are either packed on ice fresh and sent to the market, and part of those fillets then are sent to the spiral freezers and frozen as IQF product. But there's really two markets. Most of the fresh product goes to retail grocery stores like Giant Foods and the retailers that are in this market, and the frozen goes, which people have told you so far, to the food service industry, which is restaurant business and institutions.

So even though some of the restaurants do buy a little bit of fresh, it's a small fraction of their purchases. And then also the retail grocery stores do buy a small bit of frozen, but, again, it is a very minute part of their purchases. So there's really almost two distinct markets: frozen food service and fresh retail.

MS. ALVES: It is generally, then, the case that the growers are not separated, for example, growing only for the fresh market or only for the frozen market. And likewise, you've indicated that with respect to your processing, the processing for the frozen and the fresh fish takes place among all the same group of players, so there is no segregation among them.

MR. DAULER: No, not any at all. The frozen product, fillets are sold as, for example, two- to three-ounce fillets, three to five ounce, five to seven, and seven to nine. You need it closely sized for the restaurant business. At the retail or fresh level we don't size it near as close. For example, the most popular fillet item at retail, they like a larger fillet, is a five- to 12-ounce fillet. Those are packed on ice, and sizing is not nearly as critical.

MS. ALVES: The petition also, and in your testimony this morning, referred frequently to food-size catfish that weighs over 0.75 pounds, as I understand it. Are catfish under that size ever sold, or what are they used for? Why is there distinction in the industry between food size and then presumably the nonfood size?

MR. WALKER: When the catfish come into the plant, the catfish are typically saned and held overnight in a sock so that the smaller fish can get through and continue to grow and pond. Still, some of those small fish still come to the plant. Machines that we use, and they are very expensive machines that do the automatic filleting for us, can fillet only a certain size range of fish. Those very small fish cannot fit on that machine, so those fish, those very small fish, typically end up being a whole fish. So we would manually simply head and viscerate that fish so that it is a whole fish. Likewise, on the very large end of the scale those larger fish are more of a whole-fish item because they cannot be processed automatically. So those two different ranges right there take a large part of the whole-fish arena.

MR. FEATHERSTONE: It turns out that we are going to have the vote on wire rod now. I apologize for interrupting, but we're going to have to recess the conference for probably about 15 minutes. We will resume immediately after the Commission finishes its meeting. You're welcome to stay here, or you can return to your seats or go out into the hall. We thank you again.

(Whereupon, at 10:49 a.m. a recess was taken.)

MR. FEATHERSTONE: Welcome back. We will resume the conference at this point, and we thank you again for your patience for the interruption.

We were in the middle of questioning from Ms. Alves. Please, proceed.

MS. ALVES: Good morning, Mary Jane Alves, again, from the General Counsel's office. Is it correct to assume then, based on your testimony this morning, that it is at the processor level as oppose to the grower level who determines what percentage of the fish are going to be sold into the fresh versus the frozen market? Is it at that level where the negotiations take place between the processor and whoever the ultimate purchasers will be?

MR. WALKER: Yes, the negotiations between the processing plant and our buyers take place at the processors, not the farm level.

The different plants throughout the industry may focus on a certain segment of the market that they're targeting or they are geared towards going after. So while some processors may have a 50/50 fresh and frozen market, some processors may shoot more for one market or the other, depending on the investment they've got in their plant.

If you don't have very much investment in spiral freezing equipment, then you are going to be going for that fresh market. If you've got a lot of your investment tied in machinery and equipment that's going to produce the frozen product, obviously, that's the market that you've got to gear towards.

MS. ALVES: What is the typical life cycle for a live catfish? In other words, how long can you hold a catfish in the pond and still be able to sell it for use in the frozen market or be able to use it for a frozen market fish fillet?

MR. PEARCE: Realistically, you could probably hold that fish for a number of years. What happens is your processors really don't want a fish that's larger than 2 1/2 or 3 pounds. Right now, some of your processor are discounting, and it's over 3 pounds -- some over 3 pounds, some over 4 pounds.

In addition to that, the cost of growing a large fish that size, your feed conversions just go out of sight on you -- just like any other animal, the more the feed goes for maintenance and less for growth.

MS. ALVES: But there is some leeway there that the farmers have in terms of when they decide to sell that product?

MR. PEARCE: I'm sorry, I couldn't hear you.

MS. ALVES: But there is some leeway, though, in terms of when the growers can sell that product.

MR. PEARCE: To a certain degree, but, obviously, as Mr. Walker said, each processor has a certain size fish that they generally prepare to have. The growers that are selling to those particular processors are going to try and grow that size.

MS. ALVES: In terms of the processors, how much leeway is there? Presumably, there is a certain production capacity. Would the inventories more likely be held at the processor level then or at the pond level?

MR. PEARCE: Half of the fish that is going to be grown in this country are grown in a 10-week period. As a result of that, most of the inventory is going to be swimming in the ponds because they are going to be trying to processing approximately the same level each and every day of the year. So the vast majority of it is inventory in ponds. The fish do not grow year-around, and the cold weather months the growth slows down like with all warm-water species.

MS. SLATER: I just wanted to say, Ms. Alves, because of the way the industry is structured, you will see inventories accumulating, both in the processor and at the farmer level. Certainly, the data that we have suggest that there has been growth of inventories at both the processors and farmer level. So I don't think it's one or the other --

whether the processor is able to take the fish and whether he can then move it through is determined by the same factors.

MR. RHODES: I might add that one of the issues at hand is that the small fillets that are being imported here doesn't allow us to be processing that size. So the farmer has to hold onto to this until the timing is better for us, and they could be getting too large. When that happens, if we do process or fillet them, then that market has gotten cheaper, too, because there is an influx of that or a heavy inventory on the processing side. So it plays into a number of areas.

MS. ALVES: Are the purchasers will now to take larger inventories -- and I'm also thinking in terms of are they willing to take on inventories of the imported product as well provided that they have a shelf life of six months or so?

MR. RHODES: The broadliners or the buyers will buy a certain amount of inventory to allow them three or four weeks -- maybe six weeks out, but they're not going to go months out most of the time. If there is a large southeastern distributor that buys and sells a lot of catfish, he might find himself -- go ahead two or three months away, but it's very unusual. They're going to keep just a small weekly average inventory in place.

MS. ALVES: Are there imports basa and tra catfish, and I'm using this term very loosely, or other fish from any other countries that are competing against the U.S. frozen fish fillets. In other words, what should we be looking at in terms of non-subject imports?

MR. KRATZ: In terms of the catfish category -- the HTS category -- there is very small volume of non-subject imports, at least during the POI.

If you go back a number of years, there were imports of catfish from Brazil. But it's my understanding that those were whole catfish, not frozen fillets.

In terms of the other categories, and some of the other gentlemen may be able to expand on this, it is not my understanding that there are significant, if any, imports of frozen fillets of other species that fit the same flavor profile as the catfish fillets coming in from Vietnam. So I think, in general, regardless of what HTS categories you look at, I believe non-subject imports are minimal.

MR. RHODES: To further that, there is nothing else that compares that's being brought in -- imports -- that can compare to the U.S. catfish other than that.

MS. ALVES: Thank you. Mr. Klett, you were referring to some historical data there. I'm also interested in knowing whether or not these Vietnamese imports are recent or before there were import Vietnamese products, whether or not there was some history of importation of these products.

MR. KLETT: Yes, going back a number of years, I believe these are recent. I haven't seen, either in this HTS category or in other HTS categories, any significant imports of frozen fillets from Vietnam going back to at least 1989 anyway.

MS. ALVES: Thank you.

MS. ALVES: Ms. Slater, you have mentioned in the petition, and again, in your testimony this morning your belief that growers should be included in the domestic industry in this case.

If you could be very specific, how would you define the relevant agricultural product and the relevant processed agricultural product for purposes of the Commission's analysis under 19 U.S.C. 1677(4)(3), paragraph 2?

MS. SLATER: We certainly will do that in detail in the brief, but the process product we're looking at are frozen catfish fillets, and the growers are growers of food-sized catfish.

Just to follow-up quickly on your question about food size, food size are defined by the USDA is over a certain weight, but I understand that, that's what catfish farmers are in the business of producing. In other words, they are attempting not to take that fish out of the pond until it's a food-size fish.

So to the extent that anything does get lifted out, as they were explaining to you, if they don't make their way out of the nets and so on, that's not what they're after producing. So we're looking at producing and sending food-size fish into the processors.

MS. ALVES: Would there be any effect on the analysis if we were to define the growers as all growers and not just the growers of food-size fish? Are the data collected separately on those two?

MR. KLETT: USDA does collect data separately for food-size, but I think the other -- the non-food size collected by USDA really relate to earlier stages in the production process. For example, fingerlings is an earlier stage of the production's process. I believe the also collect information on stockers, which are in earlier stages of the production process and brood fish, which are different as well.

I believe USDA collects information separately for those, but I would have to confirm that.

MS. ALVES: Is there some way of collecting all those without double counting that could be used as a baseline instead of just the food fish?

MR. PEARCE: All food-size producers would have all those other sizes in the pond at some time. We still haven't developed a way of taking inventory to know exactly the numbers of each one. So all of your statistics on them were educated guesses on the break down of sizes.

The only size that the average producer probably would not have would be the brood fish size. Those are where the eggs come from to develop the fingerlings with.

MS. SLATER: I understand your question. If you would be patient with us -- let us take a look at how the data is actually is available and respond to it in the post-conference brief.

MS. ALVES: If you would, that would be great. Also, when you're answering that question, if you could perhaps educate me. I'm new to this industry, obviously.

I am assuming that the basis for Exhibit 34 would have been the tables that you provided in Exhibit 5 or something similar. If you could provide the data backup when you respond to that question, that would be helpful.

MS. SLATER: Yes, we can do that.

MS. ALVES: In the petition you included in the scope frozen fish fillets that were either breaded or marinated, should such products also be included in the domestic-like product, and why or why not?

MS. SLATER: Again, this is a great post-conference brief questions, and we will take it on fully there. Breading and marinating fish before it's frozen is something that's done by most processors. It's a pretty small piece of the frozen fillet market, but it would be something that could be done with the imported fish. I think the interest is -- we don't know that is being done to any great extent, but we wanted to make sure that there is no issue concerning the scope of the investigation.

Certainly, breaded and frozen should also be included in domestic-like product to the extent that we are looking at the frozen fillet industry. We will lay out how you might do that in our brief.

MS. ALVES: Okay. If you could also provide what data sources we should be looking to and how we would go about doing that. It seems as though they were a mutually exclusive group. You could count the frozen fish fillets that are not breaded or marinated separately from those that are.

Two other post-conference brief issues that you could address is whether or not there are any related party issues in this case. Secondly, if you could address -- there was a filing by the law firm of Rigal & Kravan on behalf of Common Heritage Corporation. If you could address the allegations in this letter, and as well address whether or not, in fact, Common Heritage is an interested party.

MS. SLATER: We have not been served with this.

I'm not familiar with that particular letter. It has not been served upon us. Obviously, we would be happy to comment on whatever it is.

MS. ALVES: Okay. If you haven't received it yet, presumably, you will be. I understand that the service lists were just issued a day or two ago. So it's possible they have not yet served.

MS. SLATER: What was the date on that?

MS. ALVES: That's July 15th.

MS. SLATER: We have not been served with that.

MS. ALVES: Just to give you a quick review of what it is -- Common Heritage has filed a notice of appearance. They're not requesting to be put under Administrative Protective Order.

They are arguing that they are an interested party as they are developing systems for the production of various products using deep ocean water, including the cultivation of food fish and the production of frozen fish fillets and other fish products.

These new and innovative systems, which apply both to the raising of fish and the processing thereof, will be used by Common Heritage to enter into the production of such products.

Then, Common Heritage submits that the establishment of a regional industry in the United States

Pacific Islands is materially retarded by reasons of imports of the subject of this investigation. Common Heritage intents to submit briefs and otherwise participate.

If you could comment on this in your post-conference brief, I would appreciate it.

MS. SLATER: We will be happy to comment on that.

MS. ALVES: Thank you. Those were all the questions I had at this point.

MR. FEATHERSTONE: Can we just wait one second to do a quick follow up on the bread and marinated.

MR. REAVIS: This is a follow-up on the bread and marinated product. We have yet to see Commerce's actual scope language. In your discussions with them I'm sure this issue came up. Do you have any idea what their exact language is going to be with respect to this?

MS. SLATER: We have also not seen their exact language. Mr. Reavis, I wish I could tell you I had some idea what they might be doing. Hopefully, that will be available today. I think we are as much in the dark as you are on that -- the discussions -- there were no extensive discussions on this particular issue.

MR. REAVIS: When you do address the issue in your brief as Ms. Alves asked you to, it would be very helpful if you also indicate what percentage of fillet production that the marinated and breaded products account for, and also, an estimate of the added value to the fish that those processes accomplish.

MS. SLATER: WE can do that.

MR. REAVIS: Thank you.

MR. FEATHERSTONE: I guess, even more fundamental than that, just a confirmation that in the data reported in questionnaires that was included -- breaded and marinated was included with whatever was recorded or not, as the case may be. Mr. Glamalva?

MR. GLAMALVA: John Glamalva from Economics. I had a few questions, first, for the farmers themselves. You indicated that most of the growing of fish takes place during warm weather. But I wanted to confirm that the fish are actually harvested all year long or are they only harvested during the warmer weather months?

MR. PEARCE: They are harvested on a year around basis.

MR. GLAMALVA: You indicated that you didn't have a real good way of taking an inventory of the ponds. How does the relationship between the grower and the processor works as far as ordering different size fish? Does the processor place an order for a certain number of 2-pound fish or do you just sell whatever you catch out of the pond?

MR. PEARCE: Depending on the processor, you have a working relationship with them. You know what size he wants. If you have fish other than size, you may want to try and move them to either another processor or let the processor know. You have a pretty broad variety of sizes coming in because the machines that Mr. Walker referred to are set up to run different size fish. They may have six or seven different lines that handle different size fish. So they need a variety of sizes, but they've got to be within that overall size constraint.

MR. WALKER: I would just like to add it takes from the egg to the finish product, we are looking about a two to three year time period for a typical catfish.

What we do is, we ask those farmers that we are working with to bring us our product, to sing with a certain size net. That net -- typically, once we say this is the net size we want to sing for our product, we don't change that on a weekly or monthly basis -- year around, that's the product we are geared towards bringing in.

For most of the processor, it's just about the same size -- you know, an inch and three-quarter size sock is what we call it held overnight so that those smaller fish -- like I say, there is usually two or three different crops in the same pond. We're continually, as a farmer, topping off that pond.

Once those fish get to a market size where that farmer can sell it. He wants to because the larger the fish gets, the worse the conversion ratio gets, and he loses money. So all sizes caught above a certain size come into the plant. We typically get a range of different sizes. The majority of that product fits into a 3 to 5, a 5 to 7 or a 7 to 9 shank fillet. Most of the product coming into our plants all the way around fall into that size.

MR. GLAMALVA: If you tailor what you've got coming in -- if you have a greater demand for 5 to 7 ounce fillets, and you can't get that particular size, do you just take whatever you get?

MR. WALKER: That's correct. Every fish that comes in, we're going to process and find a market for.

MR. GLAMALVA: Thank you very much.

Can either the growers here or maybe Ms. Slater point me to a good source for data on the costs of catfish feed over the periods of the investigation?

MS. SLATER: Obviously, in some of the farmer questionnaire responses, you are going to get a feel for that, but we may have some industry data that we can supply you that's kept by the industry. Let's us check, Mr. Glamalva and see what's there.

MR. GLAMALVA: All right, thank you.

MS. SLATER: We think it will be public information. We can give it to you.

MR. GLAMALVA: Continuing with both the growers and processors, before the fish are harvested, are there samples taken to test for quality and how often do you have to turn down a product if you do test for quality?

MR. WALKER: Flavor profile is very important in the catfish industry. We have, basically, on the flavor standpoint, there is on flavor and off flavor. There is a different variety of things that can cause a catfish to go off of flavor. It maybe the water quality at a particular time or the temperature.

So what we ask our farmers to do is bring a sample of catfish from a pond. We have a taste-tester much like a wine taste-tester who is going to go in -- he's going to take a sample, microwave it in an oven and then taste, and according to his taste buds, he's going to call that on or off. He'll have to do that -- call that pond on about three or four different over a three- to four-day period.

If it's on all of that time, then we'll schedule that pond to be seamed up and processed. We'll take a sample right before we process that fish, also, to ensure a good flavor profile with the product.

Typically, in the hotter months, there is more off flavor fish because the fish are more active. They are eating more and so the water quality may get worse. In the winter months there is less off flavor problems, but that range varies throughout the year.

Typically, there is probably anywhere from a 40 to 70 percent off flavor out there sometimes, but there is always enough ponds out there to sample from to be able to get an adequate supply into the processor.

MR. GLAMALVA: Thank you. A question for the processor, has there been any consolidation over the last three to five years in your customers -- the food service distributor business -- that might begin to explain some of the decline in prices?

MR. WALKER: There has been consolidation in the food service industries. Whether that has affected the price of our product or not, we have not seen that significantly. Those same consolidations, obviously, affect all food products throughout the food chain because those distributors are buying and selling everything from napkins to forks to beef to the entire range that a typical restaurant is going to need for their services. So to that extent, we have not seen that bringing our prices down.

MR. GLAMALVA: Thank you. That's all the questions I had.

MR. FEATHERSTONE: Mr. Stewart? Mr. Deyman?

MR. DEYMAN: George Deyman, Office of Investigations. We spoke earlier about the breaded and the marinated. I would also like to know whether smoked catfish -- I believe it does exist -- and rogue product, and rogue is coated with a seasoning and an oil-based mixture and then frozen. Would that be in the scope and/or would it be in the domestic-like product and have you included those products in your questionnaire responses?

MR. RHODES: That I'm aware of there is nothing being done by any processor on the smoked or the other item you mentioned. It might be done from the distributor level or a small fish market level somewhere else.

MR. DEYMAN: What about nuggets? Nuggets are fillets that are cut up, as I understand -- can you explain to me what nuggets are and again, whether they are in the scope and should they be in the domestic-like product?

MR. RHODES: That's a good question. When a catfish comes into a processor, a U.S. farm-raised catfish has a belly flap on it. This is a lower quality meat and during the processing, we separate this nugget from the fillet. So for every shank fillet we produce, we also produce a nugget.

This nugget is -- you may call it a by-product, but we did develop over the years a market for that product. We don't get as much money for it as we do the better quality meat, but we have developed a market for that product.

Over the years, we've seen our shank fillet business grow and our nugget business grow at an equal rate so that we've been able to market that product and keep its demand at the same pace with the shank fillet.

The foreign competition does not have a nugget or either it does and they simply do not export it into this country. There is no product out there competing against the nuggets as oppose to the shank fillets.

MR. RHODES: The nugget has got a whole different segment of the market. It's a cheaper product. It's a by-product and people expect that type.

MS. SLATER: I would just like to point out, Mr. Deyman, if you look at Exhibit 23 in the petition, there is a report from the Southern Regional Agricultural Center, which I keep referring to when I'm trying to remember what these things are. There is a nice picture of a catfish. He doesn't look very happy, but you can see his nugget separate from his shank fillet. It's actually, as Mr. Walker said, the belly flap that is cut off to create the shank fillet.

MR. DEYMAN: Are data on nuggets included or not included in the questionnaire responses you gave?

MS. SLATER: No, we have not included data on nuggets. That is not subject merchandise and not part of the light product and we have not included nuggets.

MR. DEYMAN: It was mentioned earlier, I believe by Mr. Rhodes, that the market for the frozen fish fillet, the catfish, is about 130 million pounds or it was in the

Year 2001.

Now the USDA indicates that there were 597 millon pounds of processed catfish in 2001. I would like you to explain what is included in the residual?

MR. RHODES: Well, the nugget is part of that as well -- the 597 million pound of fish. They were processed, netted as what -- 300 million or maybe a little more total saleable product, which would include whole fish, nuggets, marinated, breaded, fillets, raw fillets, fresh fillets, and even -- that's pretty much got it covered unless you do a stuffed product or you do a minced product of some sort to block freeze it or something like that.

MS. SLATER: When we look at the overall process market, it's important to look at it in terms of the percentage of processible product, if you will, so we're losing -- quite a bit of that weight, of course, is the bones and the ophul or the guts of the fish in moving from what is a whole fish to what you can -- some of that, actually, goes out as whole fish and then the rest of it, actually has a conversion factor. That's something we've used in explaining to you the large share of the process market that's accounted for by the frozen fillets.

MR. DEYMAN: By any chance, are there any other fish fillets, other than catfish that are processed on the same equipment and machinery and the same plants and same processors?

MR. WALKER: No. To my knowledge, we are strictly catfish processors in the entire industry.

MR. DEYMAN: All right. My last question is the farm bill that was signed by the president in May of this year, according to the New York Times, had a provision that benefitted catfish growers. I have not seen that provision, but could you explain to me what it is -- either now or in your post-conference brief?

MS. SLATER: The provision that I'm sure that, that article -- I'm not sure which article you're referring to, but the provision was the labeling provision that we discussed earlier. We will be happy to explain that in great detail in the post-conference brief. It has to do with the labeling of fish as catfish.

MR. WARREN: If I might add, catfish are not qualified for any subsidies or government programs. They are independent from all that.

MR. DEYMAN: Very well, thank you. I have no further questions.

MR. FEATHERSTONE: Mr. Glamalva?

MR. GLAMALVA: Yes, I did think of a couple more while you were talking. Can any of the processors here shift some of your sales -- if the relative price of frozen fillets declines, can you shift more sales to the fresh fillets?

MS. SLATER: I think we will let the processors answer that -- maybe you can start, Mr. Walker. I think, when you start listening to these answers, understand that there is a difference in the specialized equipment that's required for the frozen fillet and people have investment in that. When you keep that in mind and here their answer, that maybe helpful.

MR. WALKER: We can focus on going into future for more volume in on segment or the other, but to make any significant change in that would require us to be turning our back on the customers that we've worked long and hard to build a relationship with and a trust that we can supply them with the product.

If I were to go to a customer and say to them we're not going to sell you frozen fish today because I'm going to turn that to fresh, his doors are going to close forever for me. This business is tough as it is. We don't want to close any doors out there.

Also, the equipment that we've got, and that we've got a lot of investment -- a lot of loans against -- that equipment is geared towards producing certain products. You've got to be able to produce those products to pay for that equipment.

MR. GLAMALVA: I was thinking more like -- one of the processors mentioned that they lost a big customer for frozen fillets. Losing a sales volume of frozen fillets, could you partially make that up by trying to sell more fresh fillets?

MR. DAULER: Well, you've got to realize that -- my company, we're about 50/50 -- half frozen/half fresh. But if somebody loses a big frozen customer, for example, Danny, who was just talking, and he comes in the fresh market, then he's got to take that customer away from me or somebody else that got it. So that depresses prices and nobody gains anything.

The way we've built this industry is everybody's worked hard to develop loyal customers, you know, and work with them to grow their business and their sales of catfish. So in some sense, even Vietnamese has effected the price of fresh because, the truth being known, a lot of processors have tried to come into the fresh arena who weren't previously in that. That has deflated the prices that we were able to get for product there.

MR. GLAMALVA: One last question -- in the petition you indicated that the ophul has value. What is it used for and what has the price of the ophul done over the period we're looking at?

MR. DAULER: Ophul is mainly grounded and processed into fish meal. However, it's of very little value because we have cut the fillets off of the fish. So really, our ophul is just bones, guts and a head. We can't even use that fish meal back in the fish business because there is no flesh there -- you know, mathighanine and mercurick acid and that which fish need.

So we do sell it to the poultry industry and we give it to them. I think about the most anybody ever got was a cent a pound, and most of the time we are giving it to them just to get rid of it. We used to have to bury it and it didn't say buried very well. It comes to the surface. So we process it and almost give it to somebody to get it away from us.

MR. GLAMALVA: Everybody else pretty similar?

(No verbal response.)

MR. GLAMALVA: Okay. All right.

MR. DEYMAN: I have another question -- George Deyman. With regard to the nuggets, again, you said there was no import of the nuggets. So on the domestic side, have you seen price decreases in your sales of nuggets in the past two or three years? Or how large a share of your total production do nuggets consist of, first of all? Is it really small?

MR. WALKER: When we look at yield on a catfish, the fillet yield is about 35 percent. The nugget yield is about 7 percent or 8 percent. So on a shank fillet, we're going to get a 43 percent yield, 35 of that being the shank and 7 to 8 percent being the nugget. So it is a small relative portion of our overall sales volume.

MR. DEYMAN: Even though it's a small portion of your sales volume, I would be curious to know have the prices decreased for what you can obtain for nuggets?

MR. KLETT: Mr. Deyman, the USDA has detailed data on that, and we can provide that. I can just say, generally, that the nuggets prices, although they are lower, their price trends have not fallen by near the extent to which the frozen fillet prices have fallen. They have been relatively flat, falling a little bit. We can provide detailed information on that for you, if you wish.

MR. DEYMAN: Thank you.

MS. SLATER: Also, note in the very nice chart that Mr. Klett prepared for you, starting at the period January 2000 until May, actually the nugget prices -- while the frozen fillet prices were pretty much going through the floor, the nuggets prices increased slightly.

MR. DEYMAN: Thank you.

MR. FEATHERSTONE: Okay, thank you again for your testimony and the answers to our questions. We will take a 10-minute break, at which point the respondents can come forward to the table. Thank you.

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(Whereupon at 11:50 a.m., a short recess was taken.)

MR. FEATHERSTONE: May we resume the conference, please. The conference is back in session. Welcome, Mr Chi, please proceed.

MR. CHI: Thank you for this opportunity to testify. My name is Nguyen Huu Chi. I am the vice director, General Operating Legal Department with the Ministry of Trade of Vietnam.

I wish to express my government's disappointment and deep concern regarding the anti-dumping petition filed recently by the Catfish Farmers of America against imports of certain frozen fish fillets from my country.

This position has been clearly expressed to the of the Ministry of Trade of Vietnam to the U.S. Secretary of Commerce, the U.S. Trade Administration and the chairman of the ITC. The petition is a groundless action and an attempt of unhealthy competition demanding U.S./Vietnam economic trade position that has just gained momentum after taking affect by entering a trade agreement.

My government would like to have an understanding from the U.S. side regarding this situation and the effects of this space. Also, my government hopes that this case will receive objective consideration so as to ensure an environment of equal and fair competition among business and strict limitation of the BTA and that so as not to jeopardize the original economic relationship, but to further its growth in the interest of both sides.

The Vietnamese economic, and the fishery industry in particular, have come a long way over the last decade and now operates on the basis of the principles of market economics. Tra and Basa producers and exporters in Vietnam are mainly private or joint-stock companies. They enjoy complete autonomy in their business and the production decisions.

In all reality my government does not, and will interfere, into enterprise business nor provide any threat to them. Raising basa and tra is time-honored tradition in Vietnam. Thanks in part to a favorable climate, advanced breeding technology, an abundant and hardworking labor force, and low material cost, Vietnam businesses are able to produce and sell quality products at relatively low costs and entirely based on market supply and demand.

The Vietnamese fish industry and the economy as a whole have been actively engaging the regional and the global economies. Your government has recognized these endeavors. The enthusiastic participation of foreign investors, be they 100% foreign-owned or joint-venture companies, including those from the United States, are vivid testimony of this process.

The U.S. Census Bureau statistics indicates that basa and the tra imports total a mere 12 million pounds in 2001. This is compared to the U.S. catfish industry 597 million pound of catfish production during the same period. The USDA statistic also show that basa and tra exports from Vietnam to the United Stated declined by 64 percent in April 2002, when compared to the same month last year.

Based on these facts, it is difficult for my government to conclude that basa and tra imports from Vietnam are injuring the U.S. domestic industry. The CFA anti-dumping petition and its negative marketing campaign carried out over the last year would have you believe that frozen basa and tra fillet imports are bad for American consumers. On the contrary, Vietnam ships these quality products -- products critical to our own culinary history at fair market prices.

I am confident your Commission recognizes this. More importantly, I am certain that our governments can work together to stop this trade conflict, ensuring that our new and promising BTA will benefit us all. Thank you.

MR. FEATHERSTONE: Thank you very much, Mr. Chi, for your statement. Any questions?

(No verbal response.)

MR. FEATHERSTONE: No questions. Thank you. Can everyone come on up, please.

(Pause.)

MR. FEATHERSTONE: Welcome to all of you. Please proceed.

MR. SIM: Good morning. My name is Edmund Sim. I am partner in the Singapore office of White & Case, although, I used to live here.

Today, with my colleagues, Mr. Lyle Vander Schaff and Mr. Albert Lo, we appear on behalf of the Vietnam Association of Seafood Exports and Producers, which is known by the acronym VASEP.

Producers and exports of the subject merchandise who oppose imposition of anti-dumping duties. Joining us for this panel are the following persons -- Dr. Nguyen Huu Dung, the General Secretary of the VASEP; Mr. Ngo Phouc Hau, the General Director of the An Giang Fisheries Import/Export Joint Stock Company, who will be assisted today by Ms. Diep Hoal Nam of the law firm YKVN, Ltd. of Vietnam.

Also, Ms. Stephanie Ngo, who is the Vice President of H&N Foods International; Mr. Robert Rackowe, who is the President of International Marine Fisheries Company; Mr. Roger Kratz, who is a marketing consultant for Captain's Table.

Mr. Matthew Fass, who is the Vice President of Maritime Products International, and Mr. Carl Ferraris, who is the Adjust Curator of the California Academy of Sciences, who does not have a presentation, but is here to answer questions regarding scientific questions or issues related to labor link situation.

Together, we will demonstrate why there is no reasonable indication that the domestic industry filing this petition has been materially injured or threatened with material injury by reason of subject imports from Vietnam.

As a threshold matter, I would like to identify several fundamental flaws in the petitioner's arguments. First, there is no basa or tra production in the United States; thus, no identical-like product. Accordingly, the Commission must find a product that is most similar in characterizes and uses of basa and tra.

That product is frozen catfish fillets, whether or not breaded, which corresponds to the scope of merchandise found by the Department of Commerce in its initiation notice. I believe copies have been circulated.

Second, catfish farmers do not qualify as producers under the statutory requirements for "process agricultural products," and the operation of the catfish farmers may not be included in the Commissioner's examination of the domestic industry.

Third, the petitioner's allegations that there is no market for frozen. basa or tra fillets in the Vietnamese home market ignored a very significant market for fresh basa and tra in Vietnam. Consumptions of fresh basa and tra serves as a check on exports in any market, including the United States.

Fourth, petitioner's arguments that basa and tra are interchangeable with their products are completely contradicted by statements by they, and their allies, in lobbying for the congressional legislation to prohibit basa and tra from being labeled as "catfish."

I would like to quote Congressman Mike Ross of Arkansas who stated last year in October of 2001 "The truth is that this so-called catfish from Vietnam is not catfish at all -- not even from the same species. In fact, it is no more related to catfish than a cat is to a cow, and it's wrong for it to be passed off to consumers as farmed raised catfish."

Fifth, there is no material injury by reason of subject imports. As subject imports pale in comparison to domestic shipments. There is no direct price competition between the subject imports and the domestic product, and the condition of domestic catfish market and breaded fillet industry is robust, particularly, in light of the current economic down turn and the over capacity situation in the market.

Finally, there is no threat of future injury as Vietnam producers have a number of alternative markets, which have experienced significant growth; and Vietnam producers produce a wide variety of products other than the basa or tra in which the focus their operations, and as such, are not dedicated solely to production of basa and tra.

In sum, this petition threatens the newly flourishing relationship between the United States and Vietnam, essentially, penalizing Vietnam for implementing the very market reforms required by the U.S./Vietnam bilateral trade agreement. The Commission could stop this treat by terminating this investigation at the preliminary stage.

I would like hand over to Dr. Dung, the general secretary of the VASEP.

DR. DUNG: Thank you. My name is Nguyen Hun Dung. I am the general secretary of the Vietnam Association of Seafood Export and Producer known as VASEP.

I have held this position since 1998 when it was established. Prior to this position, I was a lecturer of the Vietnam Nation on Fishery University for 14 years, from 1973. For the next 14 years, I was the senior scientific technology expert with the Nation on Fishery from 1984 to 1998.

I accept the opportunity to appear here to offer my comments on behalf of VASEP and its members. VASEP opposes the petition filed in this investigation and respectfully disagree with much of the testimony you heard this morning from the petitioner panel.

First, tra and basa farming in Vietnam has a very long history. Beside rice, including tra and basa and other pangasius, has been the most important food for the Vietnamese nation from thousands of years. There is a traditional saying "fish to rice is like mother to child."

The petitioner gave the impression that the basa and tra industry in Vietnam was developed recently in order to sell frozen fillet in the United States and to market the product as catfish to compete with the sale of frozen fillet catfish. Nothing could be further from the truth. In fact, when first Vietnamese started to raise basa and tra a thousand years in Mekong Delta, they really think that the fish one day could bring me and our people to stand before U.S. ITC to talk about catfish from the Mississippi Delta.

The rest of the world only recently learned of the offering of our commodity. Our people just wanted to supply the best food for the community, and today, we are doing the same in Vietnam, but with much more efficient and advantageous technology to process the fish to supply to the world.

Second, in contrast to comments this morning from the petitioner, seafood producer and exporters in Vietnam are not dependent on export of basa and tra frozen fillet to the United States. We have developed many markets outside of the U.S. over the last 20 years. Tra and basa products have been exported successfully to Australia, Hong Kong, Japan, China, many EU countries and Asian countries long before their exports to the U.S.

VASEP and its members has plans to increase marketing efforts in other countries than the U.S. to gain bigger market share for tra and basa products. In fact, in the most recent periods recognized by the Commission, the first quarter of the Year 2002, our export of frozen of tra and basa fillet to other markets exceeded our export to the U.S. market.

The market share of those other countries are subject to significant growth. Studies of the USDA show that the import of the subject merchandise from Vietnam has declined dramatically. Only 414,000 pounds in March, 66 percent below the amount of last year and only 618,000 pounds in April, 65 percent below the amount from a year ago.

In other words, we were experiencing a significant reduction in export to the United States of the subject merchandise when the petition was filed.

Petitioner also confused the issue of whether there is a whole market for tra and basa in Vietnam. Basa and tra are consumed in very large quality in Vietnam, and I would believe that per person consumption of those fish in Vietnam than per person consumption of shank catfish in the United States.

So to the extent petitioners are attempting to conjure up an argument that exports of frozen basa and tra fillets to the United States will increase because there is no home market for the product, they are mistaken. The VASEP members that produce tra and basa also produce a variety of seafood and other products. In fact, basa and tra are a small product of our members overall production operations.

Look at the shares of the seafood commodities that produced by the Vietnamese processors and exported to the U.S. in the Year 2001. Within total of 70, 931 MT of seafood at value $489 million U.S. dollar, the most important is shrimp with 69.3 percent in value and 41.3 percent in volume, while all kind of fish including tra and basa products took only less 20.1 percen in value and 35.7 percent in volume.

The number of companies processing frozen fillet of tra and basa takes only 7.95 percent, total number of companies exporting seafood to the U.S. in the Year 2001. Most of the processors in Vietnam produce significant qualities of shrimp, scampi, tuna, scallops, which are a much higher value product than basa and tra, and bring a greater amount of revenue to the producers than tra and basa.

Compared to the utilization of frozen tra and basa fillet producer is high and we expect it to remain high in the next few years. Our information show us Vietnam frozen tra and basa fillet producers were operating at over 86 percent capacity utilization in the first quarter of Year 2002 and over 88 percent capacity utilization in the Year 2001.

As a general matter, Vietnamese frozen basa and tra fillet producers do not tend to carry significant quantities of the product inventory. For example, inventory was roughly 9 percent only of production of all producers combined in the Year 2001. So there is no merit to petitioner's claim that the Vietnam can ship to retail product of tra and basa.

Third, I would like to say about the inconsistency of the CFA position. From the Year 2000, the CFA Institute tried to find all kind of evidence that show that both, scientifically and practically, the U.S. catfish is totally different from tra and basa. Some people compared the similarity between Vietnamese tra and basa to the U.S. catfish is as a cat to a cattle.

The CFA requires also the restriction of U.S.

catfish only the their species and it has been overruled by two U.S. public law 1076 by last year and 107171 by last May.

Then Vietnamese tra and basa are not in the same category as the U.S. catfish. The basa and tra cannot be considered by U.S. law as live product to substitute catfish and no way to claim that they cause injury to the U.S. catfish industry.

Finally, I would like to address some policy issue and also, our wishes concerning this case. As you know, economic and market relations between the U.S. and Vietnam have been developed and flourished. In the fishery and agricultural sector, the relationship between the two countries has been established by the visit of the U.S. delegation lead by Admiral Stubblefield from NOAN and Dr. Rolland Schmitton, Director of NMFS and Mr. Dick Gutting, President of NFI, to Vietnam in mid-October 1998 on invitation of the Vietnam Ministry of Fisheries and VASEP.

Especially, with respect to catfish farming and processing, we import a lot of corn and soybean from the U.S. to use as tra and basa farming. Also, our tra and basa fillet are used for some processor to further processing. That is the correct of cooperation. I strongly believe that only a sense of cooperation instead of bad competition could settle this and further trade disputes.

In our understanding, the CFA's petition is entirely inconsistent with the other effort underway between our two governments --

MR. HAU: Good afternoon, my name is Ngo Phouc Hau. I am the Director of the An Giang Fisheries Import/Export Company or AGIFISH. I am accompanied by Ms. Nam of the law firm YKVN in Vietnam because my English is not as good as my Vietnamese. Ms. Nam will read my statement for me. Thank you.

MS. NAM: Good afternoon. My name is Diep Hoai Nam. I come from the law firm YKVN. I will be translating today for Mr. Hau.

His statement reads as follows -- Vietnam seafood industry, in general, and AGIFISH, in particular, are market oriented. AGIFISH is a publicly-held corporation who stock is publicly traded on the Vietnam Stock Exchange. We operate under the market oriented and profit maximizing principles of publicly-traded corporations in market economics such as the United States or European union.

We are ultimately accountable to our shareholders and we try to maintain profitable operations. During this anti-dumping investigation, we intend to demonstrate to the Department of Commerce that our products are sold at fair value in the United States and that we follow market buys approaching in pricing our products.

In fact, our seafood products are sold in the U.S. at prices at are equal to the seafood we sell in the EU and on average five cents higher than products we sell in Hong Kong and Singapore.

We are proud to the success we have made over the years to increase or production efficiencies. Our goal is, and always will be, to produce products of the finest quality for consumers at reasonable prices. We categorically deny any charges of unfair pricing in the U.S.

Our industry in Vietnam produce a large variety of products that export to many countries, including the U.S. I concur with the comments of Dr. Dung that frozen basa and tra fillet production poses no material injury or threat of material injury to the U.S. catfish industry.

To maximize profits and reduce risk, we produce a diversified range or seafood aquaculture products. Last year, in addition to frozen basa and tra fillets, we produced and sold significant quantities of shrimp, tilapia squid, frog legs and other products and by-products. Other basa and tra produced in Vietnam dedicate even less of a percentage of their production operation to basa and tra than Agifish, deciding, instead, to focus on other higher value added products.

Like other seafood producers in Vietnam, AGIFISH does not solely focus its export on the U.S. market.

Instead, we market our products, including tra and basa, to a number of countries in the European union, Asia, Australia and Canada. Of all of the basa and tra we export to the world, only one-third goes to the U.S. market.

In fact, in every year since 1999, our export of frozen basa and tra fillets to other countries have exceed our basa and tra export to the United States.

Like other Vietnam producers we also are operating at high capacity utilization rate and have very little available capacity with which to further increase our production of frozen basa and tra fillets.

For example, in 2001 we produced at over 92 percent of our basa and tra capacity, and in the first quarter of 2002, we operated at over 95 percent of capacity. We do not have any plans to expand our basa and tra production capacity. Instead, we continue to focus on marketing and production efforts to other products like scampi and tilapia.

It should be noted that AGIFISH and almost every other Vietnamese producer of frozen tra and basa in recent years have exported more tra than basa to the world, including the U.S. All of basa is typically a high-price fish than tra. There are several practical reasons why our industry has recently increased its shipment of tra.

First, it is easier to raise tra fingerlings than it is to raise basa. Second, as a tra life cycle is comparatively shorter, our farmers find it easier and more profitable to raise tra. As such, the percentage of tra exports compared to basa as increased significantly.

In 1999 our company shipped almost exclusively basa to the United States. In 2000 we shipped approximately 70 percent basa and 30 percent tra. In 2001 we shipped 30 percent basa and 70 percent tra. We will continue to alter our product mix, and in 2002 we expect that 85 percent of our product will be tra.

This is an important point for the Commission to understand because basa is of higher value than tra. Therefore, any price decline for basa and tra imports can be attributed simply to a steep raise in the lower value tra that we ship to the U.S. Let me repeat, the decline if values highlighted by the petitioners is simply the result of a fundamental ship product mix from basa to tra.

Our company is very proud of its cooperation with seafood producers throughout the world and it's integration into the global economy. We believe that open and honest dialogue with other seafood industry, including the CFA, benefits everyone. Our industry in Vietnam is only as strong as our ability to build relationships with seafood companies in other countries.

In fact, our companies have very open cooperation with members of CFA. In 2000 while accompanying a delegation from the U.S. industry of the auspice of the University of Alabama, including many members of CFA, which came to visit a number of our tra and basa facilities in operation. I wonder now whether the members of that delegations might have had alternative motives.

In fact, we made it clear during that trip, and want to make it clear today, that our companies view U.S. catfish farmers and processors as our counter-parts, not our competitors. I must emphasize to you that my statements today are rooted in fact and are on the actual experience of my country and Vietnam seafood industry.

I object to petitioner's assertion that my industry poses a threat of material injury to the U.S. catfish industry. I respectfully request that the Commissioner try to understand the facts in this case and render a fair decision. Thank you.

MS. RACKOWE: Good afternoon. My name is Robin Rackowe. I'm the president of International Marine Fisheries Company, a consulting firm which provides services to the fisheries industry worldwide, which is located in Coral Gables, Florida.

I have, on many occasions, served as a consultant on fisheries issues to organizations of the United Nations and other international agencies. I have more than 35 years of experience working in fisheries and have served as an executive in fishing companies in the United Kingdom, Peru, Columbia and the United States.

During the last year, amongst other activities, I worked with the Vietnam Association of Seafood Exporters and Producers, VASEP, on the United Nations project to assist the Vietnamese fisheries industry to develop a global export marketing strategy, which included diversification of products and markets.

I wish to emphasize that Vietnam's fisheries industry is just that, a fisheries industry. It is not limited to basa and tra. It is made up of producers and exporters of a wide range of fisheries products. In fact, basa and tra comprise only a small share of Vietnam's total fisheries exports to the United States.

For example, total fin fish exports by Vietnam to the United States in the Year 2001, including, but not limited to basa and tra accounted for only by 36 percent in volume and 20 percent in value of all fisheries products exported by Vietnam to the U.S.

Furthermore, one should not accept this morning's testimony that Vietnam's fisheries exporters have looked, and continue to look, at the United States as a destination for their products. Although, Vietnam's fisheries exporters are relatively new actors in the global marketplace, they know that they are best advised not to place too much reliance on a single export market.

One of the key objectives of my work as consultant to Vietnam's fisheries industry has been to help Vietnamese exporters of fisheries products to diversify their product mix and their export markets in order to assist them to protect themselves against the effects of an economic down turn in any given market or markets.

In recent years, Vietnam's fisheries exporters have begun to experience the same difficulties in global fisheries markets that U.S. catfish farmers claimed this morning is there exclusive problem.

There is nothing exclusive about the problems of the U.S. catfish industry. Fisheries industries and markets the world over is now experiencing the adverse effects of global economic recession, coupled with and made worse by, in some cases rapid expansion in production capacity.

In my years in this industry I have seen the effects which economic down turns can have on the markets for fisheries products. When economies are strong, people have money in their pockets and they tend to go out to eat more frequently. Generally speaking, fisheries products are more consumed away from the home. This is especially true in the United States.

When people eat out, they consume more fisheries products per capita than when they stay at home. If the economy is not strong, people have less money -- that's to say less disposable income -- and they stay at home where they tend to eat cheaper protein.

Fisheries product are not an important element in the list of products eaten by U.S. consumers at home. The U.S. recession has hurt U.S. catfish farmers. It has also hurt almost all fisheries industries. The U.S. catfish industry is at present is a victim of its own expansion in production capacity.

Production capacity has grown substantially over the year. With the benefit of hindsight, it is now apparent that U.S. catfish farmers have suffered because their most recent expansion was quickly followed by weaker economic conditions, which caused a decline in U.S. consumer demand for their products. Expansion in production capacity was closely followed by the recession.

The U.S. catfish has, in international terms, relatively high production and investment costs. The cost to feed, normally the largest element of cost in the production of farmed fish at high density has been affected by the price of fish meal, an important feed ingredient.

Furthermore, infrastructure requirements, environmental regulations, energy consumption for pond aeration, fish lost to bird predation, high labor and social cost and advanced research and development institutes and programs all contribute to generally high operating costs.

With consumer demand for fisheries products down, and burdened by increased capacity, catfish farmers needed to find an explanation for their problems, so they blame imports. Vietnam is an easy target because the country is inexperienced in the U.S. market.

Basa and tra like tilapia, cod, haddock, whiting, heck and other frozen fish fillets, which are white in color and mild in taste, compete in the same markets as frozen fillets produced from U.S. farmed raised catfish.

The difficulties from which the U.S. catfish industry claims to be suffering are not, in my opinion, caused by imports of basa and tra from Vietnam. They are caused by weakness in the U.S. economy and by increased capacity in the U.S. catfish industry. Thank you.

MS. NGO: Good afternoon. My name is Christine Ngo, and I'm the vice president of H&M Foods International. We are an international distributor and wholesaler headquartered in San Francisco. We offer a unique variety of seafood products -- fresh, frozen and live. Our products are sourced domestically and internationally.

As a domestic purchaser, we buy a large quantity of domestic farmed-raised catfish. We have been doing so for the last 16 years. My father, Hung Ngo, was one of the first promoters of domestic catfish to the Asian community in California. When he started, no one was willing to sell him a single box, and today, he brings in five truckloads a week.

H&N basa sales does not even compare in volume or dollar to our domestic catfish sales, but I am here today, not talk about quantity comparison, but to make note that these products are distinctly different.

H&N Imports, in marketing of basa and sawi, also known as tra, started in the winter of 1998. In October of 1998, my father toured Vietnam with a U.S. delegation comprised of members of NFI, which is the National Marine Fisheries and NMFS, which is the National Marine Fisheries Services.

On his visit to Ningung Province, the delegation was introduced to the aquaculture process of these species. He saw an interest in the product. Upon his return, my father believed the product has enormous potential as a new product development to the seafood industry.

He gathered a team of individuals with H&N to do some background research on name and imports, et cetera. As such, what H&N found was that a number different names had been used for these species and no specific names referring to the common name was listed. We called upon individuals from the Academy of Sciences to assist us in the research.

Carl Ferraris, Adjunct Curator, and a specialist on catfish species, furnished H&N with articles and readings.

To further identify this species, I had Vietnam send the original forms to the academy for examination. Mr. Ferraris received the specimen and examined them to be as they are, a pangasius barcardi and the other a pangasius hypothamis.

From the findings and comments supported by Mr. Ferraris, H&N believed that the only way we could introduce and market these species was to establish a common name for them. We agreed to call pangasius barcardi "basa". The term "basa" derives from the local Vietnamese people of the Mekong Delta.

Historically, the fish originated from the Delta area of Cambodia, a french-influenced town name Posa, which is local tongue reads "basa." It was then from that origin that the locals came to call pangasius barcardi "basa."

After three months of research and writings to support our information, we were able to seek the assistance of the National Fisheries Institute, our trade association, to work with us in submitting the name "basa" to FDA. Upon FDA's review, they came back with an approval statement for basa.

From 1999 up until today, we at H&N have marketed pangasius barcardi as basa and pangasius hypothamis as river cobbler, but now know as tra, due to FDA's listing.

Our marketing approach with these species has been to put them in its own unique category. Our marketing dollars have been spent on promotional materials, which I have examples of that I can pass around. Also, recipe cards as well as demos at trade shows. We have spent considerable time explaining the aquaculture process and developments of the products to our customers.

H&N markets basa, meaning barcardi more so than tra. We felt that basa's flavor and texture were uniquely distinctive. As word got out that basa was truly a good fillet, many purchasers were intrigued. I'm not sure what company out there has done as much as we have to brief our customers on the product.

Since the introduction of basa, we have seen the product go through a series of changes. Firstly, FDA has alerted the U.S. Customs that certain types of imports would be subject to a more vigorous documentation process. When the product enters the United States, Customs had to review each packaging material, lab test product and so forth.

In addition, the U.S. government has passed a Farm and Appropriations bill that recognizes a distinction between catfish from basa and tra.

Finally, the CFA and the Catfish Institute has funded a series of vicious attacks, ads targeting these

Vietnamese products. These ads depict fish as dirty and disgusting. It is necessary to point out racist remarks that depict the Mekong Delta as a dirty place or suggest that foreigners can't pronounce something right.

As a result of these changes, imports have slowed down. Indeed, CFA and the Catfish Institute, in their ad campaigns, recognize that domestic catfish is different from imports. H&N has always marketed basa and tra differently, and our customers as well as the U.S. government amends to this.

I am confident that this Commission, after reviewing all evidence on record, will reach the same conclusion as these products are distinct. I also wanted to pass a long an example of one of my packaging from one of my customers that distinctly identifies basa and no anything as catfish. Thank you.

MR. VANDER SCHAAF: I should make copies of these packagings. We will include those in our post-conference brief. We did, however, circulate some of the testimonials that Mr. Ngo referred to in terms of the disparaging comments they have made about the imports from Vietnam. Those have been circulated to the staff and to the petitioners. So go ahead, Mr. Kratz.

MR. KRATZ: Good morning. My name is Roger Kratz. I'm a seafood marketing consultant from Captain's Table.

I've worked in the food industry for 15 years and am particularly familiar with the U.S. market for catfish, and I emphasize the U.S. market for catfish.

Last November, the Senate Appropriates bill forbade use of the term "catfish" to used for the importation of any fish other than those belonging to the North American family of fresh water catfish.

Last May, the Farm bill made it illegal to import, advertise or sale any fish not belonging to the family of Delorda or using the word "catfish" in any form. The legislation created a clear market distinction between the Vietnamese fish known as basa and catfish.

Even before the legislation, most buyers recognized the difference between these Vietnamese products and catfish. Now that difference has been made clear, from a legal standpoint, in the U.S. market. In Mississippi and Louisiana, federal law was preceded by state laws reinforcing this difference.

In Mississippi violation is a felony, punishable by fines and imprisonment. Thus, the new federal legislation gave the U.S. catfish industry exactly the comprehensive protection from imports that it wanted. In the process of lobbying the FDA and Congress that anything other U.S.-produced product could be called "catfish," the U.S. catfish industry made repeated statements that basa is different from catfish.

Now the industry has reversed it strategy in the petition and in a calculating manner. It's asserting that these products are alike in all material respects. The petitioners have exaggerated the extent to which these Vietnamese products have been marketed in the U.S. as catfish.

Misbranding of species has been unlawful for many years per the Code of Federal Regulations, and the labeling of basa to include the term "catfish" has been illegal for several months, such that few seafood importers or distributors of note, if any, would likely run the risks associated with violation of the law.

To the extent that such name games may have taken place in the past, it would seem that this would be the acts of small players in the vast U.S. market -- rogue companies, in the words of Senate Tim Hutchinson in his eloquent defense of the U.S. catfish industry on the Senate floor.

Before addressing the accuracy of the petitioner's current stance that basa and catfish are alike, I would like to make a few comments about the U.S. catfish industry as I understand it.

The U.S. catfish farmers raise catfish without knowing or controlling what form the final process product will take. A substantial portion of the live fish raised by the farmer goes into frozen products, other than fillets, as well as into fresh products, other than fresh fillets.

The mix of products into which the farmer's crop is ultimately transformed is controlled by the processors. Studies have shown that U.S. catfish processors have required larger and larger fish from U.S. catfish farmers, which is directly adverse to the farmers' financial interest, given that the larger the fish, the longer the production time. Thereby, increasing feed and holding costs as well as increasing the risk of financial loss to the farmers due to disease or predation.

One of those studies I have here prepared by the Mississippi State University Department of Agriculture and Economics. One of the exhibits entitled "Food Fish Industries," specifically, fish flies that processors want has increased. In the early 1990 -- 1 pound average; mid-1990s, 1.25 pound average; early 2000, 1.5 pound average. Some processors now wanting 2.0 pound average. That study was prepared in July of last year.

Other studies have shown that the cost to the process as a percentage of the selling price received by the processor has been declining since at least 1994. Thus, sharing less of the profits from processed catfish with farmers. What this shows is that the goals and objectives of U.S. processors and U.S. farmers are far from congruent.

On the other hand, over the past few years, many farmers have unilaterally made the decision to increase production capacity based on the dramatic declines in the largest variable cost component in the production of live catfish -- that is fee.

Please, let me make a parenthetical remark -- fish feed is not the same as fish meal. Fish meal is, of course, is dried awful. Fish feed, of course, is primarily soy bean and corn. Corn and soy prices have declined significantly since 1997. As a result, pond acreage has increased materially, thereby, enabling the industry's live catfish inventory to increase to the point of oversupply in comparison to the market.

The ability to absorb this new production, triggering a decline in the prices that processors have been willing to pay for food-size fish. This is a classic example of production decisions made without first performing adequate market research.

In the words of Mr. Henry Gantz, president of the Catfish Institute, "Our industry is way overbuilt right now. Everything is overbuilt. Feed meal processing plants, ponds."

The petitioner's report that per capita consumption of catfish has increased in the U.S. over the past several years due to industry marketing expenditure, but can this per capita increase reasonably be expected to keep pace with higher production capacity.

Compare, for example, the 0.72 pound increase in per capita catfish consumption between 1994 and 2000 -- with the 0.30 pound increase in per capita tuna consumption; the 0.49 pound increase in per capita salmon consumption; and the 0.70 pound increase in per capita shrimp consumption over the same period.

According to the USDA, the largest competitor of the domestic catfish industry is the U.S. poultry industry. The U.S. poultry industry is many times larger than the catfish industry with enormous efficiencies of scale and production, processing and distribution and offering a wide variety of process forms and value-added products.

Similarly, catfish faces competition from other seafood, including, especially from fresh water white fish, such as tilapia, trout, stripe bass, pike and perch as well as from basa. At times, the buyers decision to purchase a competing seafood species is one of fishery economics.

For example, in my life time we have seen the processing of cod and halibut has been materially augment by Alaskan pollack in the market for breaded product. Thus, is the case with many frozen seafood items and with frozen fish fillets in particular. Catfish and the Vietnamese products are alternative, not substitutes.

According to H.M. Johnson & Associates, one of the most noted seafood marketing specialists in the U.S., product availability is, perhaps, the most important element in seafood marketing. Even more important than price, retailers running advertisements must be assured that they will have product to meet commitments.

Restaurants with menu items do not want to tell their customers that they are out. Other seafood marketing experts identify quality in addition to availability as the number one or number two determining factor in seafood marketing. One might also add brand loyalty and product innovation to this list.

In the case of Vietnamese products, other objections that have limited their marketability in the U.S. have notably been motivated by politics, protectionism and loyalty to the U.S. catfish industry.

For example, a number of major retailers and restaurant chains based in the southern U.S. have recently refused to consider Vietnamese fish in their product mix for these reasons. In a seafood buying decision, professional buyer, as well consumers, typically evaluate a seafood item in terms of its flavor, texture, appearance, color and ease of preparation. Frozen catfish fillets and frozen basa fillets as well as frozen fish fillets in general, are no exception to this rule.

The petitioner has represented that catfish and the Vietnamese are so similar as to account for much of the increase in the popularity of the Vietnamese products in the U.S. market. Yet, according to marketing literature being circulated by the Catfish Farmers of America throughout the food industry, the Vietnamese products are no more closely related catfish than are cattle related to common house cats.

On a more subjective level, according to Henry Gantz, in comparing Vietnamese fish to U.S. farm-raised catfish "It's just not the same quality as ours. Our is grown in clay-based ponds with fresh well water, and their is grown in the Mekong River. You can draw your own conclusions."

Furthermore, according to Mr. Gantz, "It does not taste like ours. It does not look like ours. It does not smell like ours. It is just not ours. It is a different fish altogether. A fish is going to taste pretty much like the waters he swims in."

On a more subjective basis, analytically, frozen basa fillets are lower in fat and higher in moisture content than catfish. They are milder in flavor. They are softer and flakier in texture than catfish. Farm-raised catfish fillets have a grainy appearance not present in farm-raised basa fillets. Frozen farm-raised basa is whiter in color than frozen farm-raised catfish and the reddish, yellowish and sometimes grey hues found in farm-raised catfish are absent in farm-raised basa fillets.

Let me leave you with one final thought concerning the present situation. Over the past few years, seafood prices have been generally declining due to economic recession and international tensions.

Again, in the words of the president of the Catfish Institute, what has not been "given enough credit for causing the price of fish to go down is the general economy. A lot of people are simply not eating out. Now what portion of this has affected us, I don't know, but I think it has affected us more than we're giving we're giving it credit for." Thank yo.

MR. FASS: Good afternoon. Thank you for the opportunity to testify. My name is Mat Fass. I am the vice president of Maritime Products International -- a fourth generation, family-run seafood company based in Newport News, Virginia. Our family has been in the industry for over 100 years now. We are currently focused on the distribution of both our imported frozen seafood items as well as a variety of domestically-produced seafood items.

We work with a variety of seafood products and one of the strengths of our company, we hope is a very keen understanding of the entire U.S. seafood market as a whole as well as various international markets.

I would like to spend a few minutes to try to help the Commission understand how our company does business and how handle the frozen fillets from Vietnam. We have been importing and distributing basa for about four years. On every single seafood item we handle, we spend a tremendous amount of time overseas, working first-hand to understand every aspect of the business we are entering. Therefore, I do speak with a tremendous amount of first-hand knowledge of what we've seen with basa in Vietnam.

I can tell you that before -- I've been with the company since the mid-90s. Again, our family has been in the industry for about four generations. I have no recollection that we have actually ever sold any domestic catfish in our company. I don't mean that in a disparaging way. Our company just does not add value to the distribution channels of domestic catfish. We're neither a producer or a distributor of U.S. domestic catfish.

Therefore, when we began importing basa, we did not displace one pound of catfish sales in our operations. Our background in this fish will always stand out in my mind as one of the most exciting seafood events that I've personally have ever experienced. I was very clear early on when we first this fish that it had just wonderful potential and tremendous consumer appeal for the United States consumer.

Being in the industry as long as we have, we have pretty good feel for what the U.S. consumer is looking for in terms of frozen fillets. There are quite a few attributes of the basa and the tra which fit the U.S. consumers in ways that many other fish just don't fit. Therefore, we were extremely excited to have the opportunity to begin to develop and market a new fish.

From Day One, our company has never labeled or marketed a single piece of these fillets from Vietnam as catfish in any way. When we first started marketing and bringing in -- in importing basa, we labeled the product as basa. Although, we experimented with some different labels such as the cobbler name you've heard. We again, have never incorporated the word "catfish" in any way with anything we've ever imported or distributed.

To give you a little example of our market perspective, we view basa the same way as a couple of other seafood items were viewed 10 to 15 years ago. As examples, Chilean sea bass and tilapia were probably just about unheard of by the U.S. consumer maybe 10, 15 years ago.

Today, they are two of the most popular fish fillets in the market. However, the seafood industry is a very complicated one and things take time to develop. We view a tremendous amount of development possibilities as basa, but it does take time.

Our customers include the entire range of seafood customers, including grocery stores, restaurant chains and main line distributors throughout the United States. We sell basa to grocery store chains and we sell basa to large distributors. We know, first-hand, that our customers, including many grocery stores are selling this product at the seafood counters in their stores as basa. They will sell it in the same seafood display as a variety of other seafood items from U.S. catfish to shrimp to tilapia.

As for one example, we do business with a retail chain that is located in the heart of the South, and one of the most tremendous sellers of U.S. catfish -- always had been a great seller and advocate of U.S. catfish and always will be. They were extremely excited when we presented the different basa and tra fillets for Vietnam.

They chose the fillet which they thought best fit their customer profile, and they begin promoting it immediately as basa. They have seen some wonderful growth as just an added fish fillet in their seafood counter. There are more stories like this.

Basa is a seafood product that is distinct from catfish. Does it have some similar characteristics -- of course. It is a mild flavored fish. It is generally white in color. It is a good cost profile. It is relatively easy to prepare. It is easy to fillet in a skinless and boneless form. However, so are a tremendous amount of other fish fillets in our market. Orange roughly, tilapia, haddock, cod, whiting -- the list goes on.

Our customers have always been excited about this product as a new fish distinct from catfish. We have found that many customers view basa, actually, as a higher value product than U.S. farm-raised catfish. There are stories of some progressive high-end restaurants that have begun to feature this fish on their menus at $20 a plate and higher. It has that kind of appeal to the consumer.

However, because the product is produced in Vietnam very efficiently and with excellent consistency and supply, there are a variety of end users throughout the market who are able to feature this fish.

Again, it is taking a very, very similar path as Chilean sea bass or probably a better example is tilapia. Tilapia is a relatively inexpensive fish to product, but you will find it in a variety of outlets around the country and it will be selling at certain restaurants as a higher end value and in other places a little bit middle of the road or lower end.

Big restaurant chains and big supermarkets move a lot a product. Restaurants will substitute new items all the time when they are presented with wonderful new opportunities. If a restaurant chain hears they can get tilapia from China, then they will look to replace their frozen fish fillets with tilapia.

If restaurant is serving fried fish in the form of a sandwich, it may draw on whiting or pollack fillets to fit the bill when the market is available to them. However, one misconception I would like to try to clear up a little bit is that restaurants and supermarkets do not do business in many of the same ways that other businesses that this Commission may have looked at in the past when analyzing like product.

For example, I think, oftentimes, analyses in the past about like product have been -- you might have a customer who, on any given day, can chose products A, B, C, and D, and will chose solely based on price because they are equally substitutable at that moment. It is not quite the same in the seafood industry.

Over the course of time, we work as hard as possible to try to introduce new species to restaurant to either be an additional item to something they sell or perhaps represent a little better value in other ways.

But on a daily basis, customers are not calling and saying which product is cheaper today -- A, B, C, or D -- and we will simply buy that product. There is no sort of substitution in that way in the seafood industry.

The seafood industry is an extremely difficult business. It has been forever and it's been an exciting business. But it has been remarkably tough in recent years. I do not doubt one minute that catfish processors maybe struggling. Every aspect of this industry is struggling quite a bit more than we were many years ago, but it is incorrect for the catfish farmers to simply point to basa and tra as the reason for their struggle.

Our company does sell a variety of seafood items, and I could over, item by item, virtually every item sold in the United States and you would see a very sharp downward price trend across the board, and much of it happening in a very recent period of time over the last couple of years -- sometimes within the last 12 months. Some of the price drops are much more stark than what we've seen with U.S. catfish.

What are some of the reasons for what's happening in our industry? We could probably spend many hours just trying to get at some of the reasons, but just a brief outline, there has been an incredible amount of consolidation in the seafood industry in recent years.

Everybody in our industry, whether one is an importer or a domestic producer or some combination of both, ultimately sells their product directly to supermarkets or large distributors, or when the case may be, restaurant chains that are large enough to buy directly themselves.

The consolidation that we've seen in recent years has reduced the number of ultimate customers in the market to remarkably few. Actually, it was interesting. There was just a random reference made earlier during the petitioner's presentation -- just mentioning the name Cisco and Alliant as to large distributors in the United States.

As it happens, Cisco has traditionally been the largest single distributor. I think Alliant was, I think, the third largest. Within the last couple of years, Alliant has been bought out by the second largest distributor. And the largest, Cisco, has bought many of the smaller distributors. So the universe, ultimately, is shrinking.

The way they do business is changing dramatically, going from a very decentralized system dealing with so many different people around the country to trying to centralize things more, and therefore, buying from far fewer people around the country.

Retail is going through the exact same process. There has been an unbelievable amount of consolidation. We have far fewer grocery chains, essentially, with fewer ownership in this country than we have ever had in the past. The trend is continuing.

This has had an incredible effect on our industry, not only because, again, it reduces the universe of buyers, but also we have seen supermarkets across the board having to spend quite a bit more time during the last three or four years to try to understand how they can better do business and how they can create synergies with the transactions that they're undertaking rather than focus on simply buying a product and putting it in their stores at the right price and the right quality.

It's an unfortunate situation and one that we hope resolves itself as some of these transactions begin to mature, but it is one that has an effect on every single supplier in the United States. At the same time, these supermarkets are consolidating. They are also changing the way they buy, again, going to a much more centralized system and allowing for far fewer people to participate in their process. It's causing consolidation, not only from U.S. producers, but also from importers.

Had domestic catfish producers expanded a little bit too much at the wrong time -- possibly? They have built a tremendous name for their product and they have undertaken some great -- putting aside the anti-basa campaign, they have undertaken a great marketing campaign promoting their fish over the last 10, 20 years.

When we weren't going through some of the difficulties are industry is now, they were reaping the benefits of that marketing campaign. Today, things are coming back a little bit from where they were.

However, as difficult as the seafood industry is, it is also one of the most exciting and dynamic and constantly-evolving industry in this world. Our company, along with many others, I am sure, takes great pride in working to bring some of the highest quality items to consumers around the United States. We hope to continue to do the same with basa. Thank you.

MR. VANDER SCHAAF: I'm Lyle Vander Schaff from White & Case. I will be addressing a couple of legal issues and some of the economic issues associated with this case.

There are a number of questions, or I guess, more appropriately, problems -- for me, personally, they are headaches associated with this case. They stem from the most fundamental and basis issues involving the case, such as what is a domestic-like product? And the fact that the petitioners claim to be the party in the U.S. industry who has the right to claim that they are domestic industry that corresponds with the imports of basa and tra from Vietnam.

Now Ms. Alves, I have not seen Rigal & Kravan's letter. I know that they entered an appearance. I don't even know the product that they claim they produce that is the domestic-like product for imports of basa and tra from Vietnam. I don't even know if it's catfish, but the fact of the matter is, there are a number of fish that are produced in this country, or that are imported, that can be directly with basa and tra.

As Mr. Sim said at the beginning, there is no product that is like basa and tra. There is an absence of like. When that happens, under the statute, you must find a product that is most similar in characteristics with basa and tra. I imagine Rigal & Kravan's letter questions whether or not the U.S. catfish industry has the right to claim that they are the product most similar in characteristics with basa and tra.

Well, that raises a number of competition issues. What does basa and tra compete with or does it? What does shrimp compete with? Does shrimp compete with basa and tra? How about chicken? When you go the grocery store and by a protein product or a meat that you're going to grill or cook, do you think about buying fish as oppose to chicken or steak -- you know, a protein source? These are the difficult issues that arise in this case, and simply calling it a similar flavor profile, which is what the petitioners have done, raises a number of difficulties.

It's a white-colored fish. It's mild in flavor. It's low in cost. It's easy to prepare. Do all of these things come into play when we decide what is like product? Do we look at other fish like farm-raised tilapia in the United States as like product? Do we look at other fish like red-striped bass, which is farm-raised in the United States as like product?

What about fish that are imported and processed and they are white in color, mild in flavor, low in cost, and easy to prepare -- are those part of a like product?

We are encouraged by the fact that the petitioners at least have acknowledged that breaded products should be part of the like product. If I understand Ms. Slater testimony correctly, she indicated that they agree that breaded products should be included. We agree with that.

We will not be arguing that fresh, necessarily, should be included with frozen. We are very aware of the Commission's precedent on that, and we are not prepared to go through the legal hurdles necessary to demonstrate the Commission's been wrong for all these years. It does raise a number of competition issues -- what does basa and tra compete with? What domestic products compete with other types of products? What does catfish compete with on the store shelf or out in the market.

A It is not clear whether or not the questionnaire responses included breaded products -- breaded frozen fillets in the data base. We'll have to get to the bottom of that issue. With respect to the domestic industry, we will be arguing that the farmers -- with all due respect to them -- do not qualify, under the statute, for a processed agricultural product.

The numbers simply do not line up. We know that the petitioners went through a very complex analysis. I can go into this in the Question and Answer session if you want. I think the analysis is very simple. All the data is available from the USDA. I've circulated some of that to you and we can go into in the Q&A session, but I know my time is running out, so I'm not going to get into it now.

There are also a number of problems associated with the non-subject imports, which came up this morning. As we said, there is no like product. We have to go to something that is most similar in characteristics and uses. Well, what is the non-subject import then? Is it the catfish item in the HTS schedule or is it the other HTS items that have been identified as the petitioners as comprising part of the subject merchandise imported from Vietnam?

Is it correct to just use one type of fish, like basa and tra, as non-subject articles? Well, we don't have a like product. We have most similar in characteristics and uses. What do we look at on the import side for non-subject imports -- something more similar in characteristics and uses? Does that include tilapia, bass, cod fillet, catfish?

We object to the notion that the non-subject imports to comprise only basa and tra. We believe that obviously includes other fish. We will be detailing all of these arguments in our post-conference brief.

I think my time has expired, so I'll finish there. Thank you.

MR. FEATHERSTONE: Thank you, Mr. Vander Schaaf, and all the witnesses for you testimony. It wasn't completely clear to me which of these ads and tables you wanted added as conference exhibits versus those that would be attached to your brief. Are you going to attach them all?

MR. VANDER SCHAAF: Everything will be attached to our brief. We brought for the convenience of staff rather than use an overhead so that they could be looked at if questions arose about them or people wanted to comment on them. I don't think it's necessary to include them as exhibits because we will be providing those as attachments to our post-conference brief. We certainly don't object to attaching them as one exhibit so that they get on the record.

MR. FEATHERSTONE: Well, since two of them are tabular data, why don't we take them as a collective conference, too. You can also attach them to your brief.

Before I give them to the court reporter, I would like for you to confirm that this is the entire packet, if we could. Then we will continue with the questioning.

MR. VANDER SCHAAF: That's correct. I believe that the packaging that Ms. Ngo circulated is making its way around. We will providing those in the brief and they should not be provided to the transcriber. Thank you.

MR. FEATHERSTONE: Great. Thank you. Mr. Reavis?

MR. REAVIS: It might be helpful, Mr. Vander Schaff, while we're on the issue of like product, if in your post-conference brief, if you claim that catfish is not like or similar to what's within the scope of the investigation, that you go into some detail as to what product you think is like or similar to what's within the scope.

MR. VANDER SCHAAF: I'll have to take a look at Rigal & Kravan's letter to be honest with you. I'm almost afraid to comment now because I really don't know what other products that are out there that do compete. There are so many, to be honest with you, that could claim they compete because they are -- like I said, white in color, mild in flavor, low in cost, easy to prepare fish.

So I'll think we will have to get into that in our post-conference brief. I will note that we did get the scope language from the initiation notice today. It does included breaded products, so the staff and the Commission has to do something with that.

Breaded and marinated imports are covered by the scope, so you're going to have to find a product, again --

there is nothing like breaded and marinated bass and tra frozen fillets produced domestically. So you're going to have to find something most similar in characteristics and uses. We will be getting will be getting into that as well.

MR. REAVIS: I'm just saying that the Commission will have to decide one way or the other what is like and similar. So anything that you can provide us with would certainly be helpful in that respect.

MR. VANDER SCHAAF: Certainly.

MR. REAVIS: Ms. Ngo, you lost me on your discussion of sawi -- the fish called sawi.

MS. NGO: The reason why I called it sawi is because, under the FDA list of approved names for pangasius hypothamis, which many of the people have referred to as tra. So I've only called it sawi because that's an FDA-approved name. Tra -- I'm not sure where it's at or whether it's approved by FDA or not today.

MR. REAVIS: I just wanted to make sure that it was one of the three species that is under investigation here.

MS. NGO: Correct.

MR. REAVIS: You're not related to any Vietnamese processor?

MS. NGO: No, I'm not.

MR. REAVIS: Is that correct? Is that -- I suppose this is a question for Mr. Dung. Is that generally true that Vietnamese processors do not own or are not related to any of the importers in the United States?

DR. DUNG: No, it's the importer -- the U.S. importer, you know, is the buy is not related in any way.

MR. REAVIS: That's what we understand.

DR. DUNG: Yes, that is right.

MR. REAVIS: We can discuss this in the post-conference brief.

MR. SIM: That's correct.

MR. REAVIS: We're not well-represented in this case with importers questionnaires, so I wanted to ask that question.

Are frozen fillets made in Vietnam from any other kinds of fish other than basa and tra -- or the three species that are under investigation, do you know?

DR. DUNG: There are a lot of other kinds of species that we do frozen fillet, not only tra and basa. I can mention a lot. There are many species of the marine fishes like the -- it's difficult for me to mention in English. I remember only the Vietnamese name.

MR. REAVIS: Well, you don't have to mention the names. It's enough to know, then, that there are other species of fish in Vietnam from which frozen fillets are made.

DR. DUNG: Yes, a lot.

MR. REAVIS: Now are these frozen fillets also exported throughout the world?

DR. DUNG: Yes.

MR. REAVIS: Are they exported to the United States?

DR. DUNG: Yes, sir.

MR. REAVIS: Do you have any idea how much of these fish are exported to the United States relative to the frozen fillets of what's within the scope?

DR. DUNG: I can mention to you it's -- because we're having difficulties, not only in Vietnam, but also in the U.S. that, when they do export and import, the specification sometime is not exact -- you know, the call it frozen seafood. That's enough to pass because there is no tax for export. Here we have the same situation, but I can give you something that compare.

Following the data of Vietnamese Customs that only time basa frozen exported to the U.S. in the Year 2001 took only 4.4 percent of total Vietnam frozen fin fillet exported to the U.S.

MR. REAVIS: Frozen fillet exports to the U.S.

MR. SIM: Let me repeat that. We will submit this on the record and the post-conference briefing.

According to this chart, which comes from official

Vietnamese Custom statistics, there is the term "frozen fin fish exports," so that's all kinds of fish -- frozen fish, fillet and non-fillet?

DR. DUNG: Yes.

MR. SIM: In 2001, in terms of value, okay, tra and basa are 4.4 percent. That means, if you take that out of 100 percent, the remainder is 95.6 percent, which is not tra or basa of what the government data show. So the vast majority of frozen stuff going out from Vietnam is not tra or basa.

MR. REAVIS: But you cannot break down that frozen material by type of fillet -- can you separate between whole fish; between fillet from steaks; from any other way that a fish might be cut?

DR. DUNG: Some how it takes time because it makes to go through the data, but as I mentioned, in most cases you cannot divide into small groups. They just call it frozen fin fish or sea fish. This part is very difficult to divide, but, generally, we can do that.

MR. SIM: We will try to get that into the post-conference brief.

MR. REAVIS: Right. What we're trying to decide here is, is there any other type of frozen fillet from Vietnam that enters? Otherwise, we are going to be forced with using --

MR. SIM: As an importer, we are offered and are offered all the time a variety of other species -- fin fish fillet from Vietnam.

MR. REAVIS: From Vietnam -- frozen?

MR. SIM: Yes.

MS. NGO: To add to Matt's comments, yes. At H&N, as an importer, we do buy various different fin fish. Sometimes in whole form; sometimes in fillets. So I don't have that accurate data for you at this moment, but I'm pretty sure I can find out at a later time.

MR. REAVIS: It sounds to me like this fin fish is the largest single frozen fillet, other than basa and tra, that is exported to the United States. It's a generic term.

MS. NGO: Fin fish is generic or general term for all types of different other -- in our seafood industry we can say fin fish would be pollack, tilapia -- so it's one category because there are just too many fishes to term under a list. So you just want to say fin fish.

MR. REAVIS: But there are other species of fish that are fillet that come over to the United States in fillet form from Vietnam?

MS. NGO: Yes.

MR. REAVIS: It might be good to identify those in your post-conference brief. In your experience, Ms. Ngo, say, in the last year or two, what percent of your frozen fish fillets from Vietnam have been the three species under investigation as oppose to other species that have come from Vietnam that are frozen and fillet?

MS. NGO: From Vietnam?

MR. REAVIS: Yes.

MS. NGO: I don't think there is any other species that -- I'm sorry, can you just repeat your question? I'm trying to understand what you just asked.

MR. REAVIS: Right. I used the term "fin fish" that you're using. Given your total imports of total fish fillets from Vietnam in, say, the last year -- what percentage of those were the subject product -- that is, basa and tra?

MS. NGO: About 60 percent.

MR. REAVIS: About 60 percent?

MS. NGO: About 60 percent of Vietnam product only, correct?

MR. REAVIS: Right. The other 40 percent being frozen fillets of other species.

MS. NGO: Of other types of species, correct.

MR. REAVIS: I understand. Can anybody else, from first-hand experience, indicate what their imports have been? I think you're the only importer, right?

MR. KRATZ: I can't give you percentages, but I do have experience with a number of seafood importers, and I can tell you I'm aware of many other types of fin fish fillet, aside from the subject basa and tra that are imported from Vietnam in frozen form.

MR. REAVIS: Okay, fine.

MR. FASS: Our personal experience is probably over 90 percent of our fish fillets have been basa or tra, but that's due to the lack of -- there are other companies in the same position as ours are quite a different mix than that.

MR. VANDER SCHAAF: Larry, I have to emphasize -- we're going to get to the bottom of this. I don't know -- I haven't seen the backup for this 4 percent number. We're going to take a look at it. I don't want to make a representation that this is a closed book. I'm surprised that number is so low. We are going to look into it, okay? I just haven't seen the backup. There is not an English translation of what was involved in that study. We'll get to the bottom of for our post-conference brief.

MR. REAVIS: Okay. As a related question, I presume that basa and tra are grown commercially and filleted in other Southeast Asian countries, is that correct, Mr. Dung?

DR. DUNG: I think that in the Southeast Asian countries some countries do the same.

MR. REAVIS: Do you know if you are in direct competition with frozen fillet made from basa and tra produced in, say, like Cambodia or Thailand or China or Indonesia? Are you aware of a significant amount of frozen fish fillets of basa and tra being produced and exported in those countries?

DR. DUNG: I think Mr. Rackowe might have better answer than me, but in my understanding that in Vietnam we can produce with a lower cost and with high quality.

MR. REAVIS: So in the marketplace you don't run into basa and tra frozen fish fillets from other countries very much.

DR. DUNG: From our country or in our country?

MR. SIM: From other countries.

DR. DUNG: From other countries, I don't think so.

MR. REAVIS: Competing for exports throughout the world for this product, do you encounter --

DR. DUNG: Yes, they do the export. They do exports of some fillet.

MR. REAVIS: Made from basa and tra?

DR. DUNG: Yes.

MS. NGO: Sorry, to answer the question, I'm familiar with the fact that other competing countries, such as Thailand -- I'm not sure of Cambodia. I'm uncertain of that, but I'm fairly positive that Thailand is doing the aquaculture and competing with Vietnam product.

MR. REAVIS: Worldwide? Have you encountered any?

MS. NGO: Well, we've been offered product from Thailand, but we haven't been purchasing any Thailand product yet.

MR. REAVIS: So you don't know how it compares?

MS. NGO: Yes, I don't know how it compares yet.

MR. KRATZ: I'm aware of similar information that the subject species -- the Vietnam species are also produced in Thailand and are exported in the world. I don't have data on that, but I am aware of aquaculture production in Thailand of the same species in competition with the Vietnam.

MR. REAVIS: Are you aware of much in the way of --

MR. KRATZ: I believe India as well does produce pangasius as well.

MR. REAVIS: Are you aware in way of product from Thailand or India coming into the United States?

MR. KRATZ: I don't have data on that. I'm sorry. We haven't heard of anybody.

MR. REAVIS: Okay. One other question -- I assume if any breading or marinating of the Vietnamese product is done, it is done in the United States, not in Vietnam. Is that correct?

DR. DUNG: We do some breading in Vietnam.

MR. REAVIS: You do some breading?

DR. DUNG: Just started.

MR. REAVIS: Do you export this product to the United States as well?

DR. DUNG: yes.

MR. REAVIS: Thank you. I have no further questions.

MR. FEATHERSTONE: Ms. Alves?

MS. ALVES: Good afternoon. Mary Jane Alves, again, from the General Counsel's office.

If you could, when you're trying to clarify some of Larry's questions, also specify in your responses in the post-conference brief, which ATS U.S. categories the imports are coming in under so that we can be certain whether or not, for example, the main category discussed in the petition, 0304.20.60.30, is where all of the imports are coming in, or whether or not some of these Vietnamese exports of other types of fish are coming in under that category.

Likewise, the petitioner has also alleged that there are some additional categories involved. If you could specify whether or not, in fact, some of the basa or tra maybe coming in other these other categories just so we have a sense of what categories are at issue and what maybe coming in and classified under the various categories.

MR. VANDER SCHAAF: Yes, I will add one point about that. The Catfish Farmers of America got what they asked for. They got the legislation they lobbied for. They went to Congress and told Congress that basa and tra and other types of imported so-called labeled "catfish" are not catfish at all. Congress agreed. Congress passed a law that said these imports are not catfish.

If you're an importer, and there is a category, 030420603, for a "catfish" are you still going to classify your product as catfish on your entry documents? My guess is many importers have ceased doing that. I know I would. So this issue of where are different fish being classified, again, was provided to this industry by our U.S. Congress.

So I don't really, what these other fish will be classified as. I think it will be very difficult for us to figure that out, but I would expect that many of them are not bringing it in under catfish based on the change in the law by Congress. I'm speculating, but I think that maybe a result that is occurring out there.

MS. ALVES: One of the reasons I'm asking the question is because there is an allegation in the petition that there has been a change in categories, and we should also be looking at some of these other HTS categories to explain where these are coming in. It makes a difference in terms of volume to the extent that we're relying on specific information as oppose to questionnaire responses.

So if you could give us some guidance one way or the other as to what the composition maybe of these various categories, and to the extent that there have been changes in recent years -- perhaps, due to the labeling changes, how these labeling changes may have affected things.

MR. VANDER SCHAAF: We will do that. Thank you.

MS. ALVES: It seems fairly clear from your testimony this morning that you don't believe that there is any product that is like the basa and tra produced in the United States, such that, in absence of a like product, the Commission is required to find a most similar product.

It would be very helpful if you could help us identify, specifically, what these other potential surrogates are. If you believe that it is not catfish, what else should the Commission be looking to?

MR. VANDER SCHAAF: Can I add one other comment about that? The Commission has five factors that it looks at to decide like product. If it's an upstream or downstream analysis, it looks at some other factors to define the like products, and those factors are pretty much written in stone in terms of the Commission's analysis.

There is a wholly separate issue independent of the legal question of like product. That is, the issue of competition between the subject imports and the domestic-like product, whatever that may be.

For that, the Commission looks at conditions of competition; alternative of products; substitutability -- all kinds of factors in the market. Despite, what the Commission will decide with respect to like product that does not determine the real market issue of where the competition lies -- between whether its basa competing with tilapia or competing with striped bass or whether tilapia competes with catfish or whether they all compete with chicken. So we want to make sure that you understand that we will be addressing the like product question.

But with respect to the issue of competition and causation, we think that it's clear already at this stage that basa and tra imports are not the cause of any alleged harm by this domestic industry because their are problems with their argument of a nexus in competition between catfish and basa and tra.

Their claim that we get to be the industry in the United States that gets to come forward to this agency when this product is imported in increased volumes. Why don't the tilapia producers get to come here? Regardless of the Commission's like product analysis, they probably compete with basa and tra just as much as the U.S. catfish industry. I would say maybe more.

So just keep in mind that we're going to dance around and nail these issues, but there is a competition and causation issue associated with this as well.

MS. ALVES: I understand that they're separate inquiries, but our first inquiry is always to define the domestic-like product. In this instance we really need to understand exactly what you believe is the most similar product. If you're saying it's tilapia, I would like for you to walk through those domestic-like product factors and tell me why it's tilapia.

But, if, in fact, it's catfish, then that by, no means, necessarily is going to drive what our causation discussion may be. They are separate inquiries, but what I need to understand is whether or not your arguing that, for example, chicken is the domestic-like product at issue here or what is the most similar product? I'm assuming it's not chicken.

MR. VANDER SCHAAF: We will concede that it's definitely not chicken. We will definitely get to these issues in the brief. We'll go through all the factors of like product factor, definitely.

MS. ALVES: Okay. Assuming, arguendo, the Commission were to accept catfish as the domestic-like product at issue, at that point, would argue that we should also look to the marinated and the breaded products as well?

MR. VANDER SCHAAF: Yes, we would because they're part of the scope. So you've got to find something like, or in the absence of like, most similar in characteristics and uses with the breaded product. It's either a separate like product from frozen fillets, in which case the Commission would vote on frozen fillets -- whatever they may be -- and then the breaded product or they're combined in the same like product and the same domestic industry.

So, yes, we will definitely have to comment on the breaded issue because we think it has to be addressed by this Commission, whether as a separate like product or combined with the fillet product. We do seem to agree with the petitioners that the breaded products should be included with the frozen fillet product.

MS. ALVES: Thank you. I asked this same question this morning at the petitioners. How should the Commission define the relevant agriculture product and the relevant processed agriculture product for purposes of its analysis under 19 U.S.C. 1677(4)(e), paragraph 2?

MR. VANDER SCHAAF: Well, the processed agriculture product should be the like product. The reason we are hesitating to say what the like product is right now is I haven't seen Rigal & Kravan's letter. I am surprised that they had filed something. There may be a product produced in this country that is more like basa and tra than frozen catfish fillets. I'll have to look at their letter and see what they say. Whatever that like product is, that would be the agricultural product that you look to.

In terms of what feeds into that, I'm not necessarily sure. I will have to look at the research on this. I'm not necessarily sure the approach the petitioners used was accurate. They engaged in a difficult analysis. They basically said approximately 94 percent of food-size catfish is sold directly to processors for processing -- 94 percent. That means 6 percent is going somewhere else of the, apparently, rough product that they admit gets put into the stream.

Then they say that all of the process catfish products -- frozen catfish fillets constitute the single largest product in terms of both volume and value that's produced from that. Then in 2001 they say that frozen catfish fillets accounted for 54 percent of total of live catfish weight processed. Well, that's 54 percent of 94 percent -- do the math -- total 50 percent.

So even under their analysis, they forget to divide 54 percent -- consider 54 percent of the 94 percent. When you do the math, it's 50 percent. So their best argument about whether or not farmers should be included in the domestic industry is that they comprise a whopping 50 percent of the product that is directly sent to the production of the like product.

We have some serious problems with that mythical approach. One of them is what is the product that you look at to decide what is the raw agricultural product? Is it the food weight product. We're not necessarily sure that it is.

You had asked whether the domestic producers sell a smaller fish or whether it gets produced. They answered that it sometimes falls through the net and gets included in their production stream. But the question is whether the farmer sells it for something. Does the farmer take the smaller fish, the fingerlings or whatever, and sell those and should those be the input article?

We are going to take a look at that, and look at the Commission's precedent to see whether or not the petitioners followed a correct approach to use that food weight product to say that, that is the one that you look at. The data that we provided to you from the USDA, and that we will be relying on in our brief, calls it growers sales. It's the total live weight of fish delivered for processing.

I don't know if that should be limited then to the product that the petitioners used. There were some references in the petition to some other data that wasn't provided in the petition. So there are questions about some of the conclusions that they've made. Maybe we can back things out now that we know a little bit more, but some of the things that they make a conclusion on we're not sure what their basis was for a source for that information.

MS. ALVES: Is your challenge of the Commission of the inclusion of growers in the industry then, limited to the first prong of the statutory test or do you contest both prongs?

MR. VANDER SCHAAF: Well, again, we're going to continue to take at look at it, but there is the issue of, if the Commission looks at market value, is the sale of the live fish by the farmer -- does it comprise a significant enough portion of the value of the fillet? We'll look at the precedent to decide, but I'm not sure that, that second prong is met either.

They have emphasized the trend of fish prices versus processed frozen fillets, but there is this second step within that to whether you look at market value and whether the fish comprises a significant enough portion of the value of the frozen fillet. That's the prong that they may not qualify for. I think it may be based on the precedent and what's appropriate in this case. We will take a close look at that and analysis that in the post-conference brief.

MS. ALVES: Okay. In this morning's testimony there has been a lot of focus on potential quality differences between the imports from Vietnam and the catfish produced domestically. Are both products marketed to the same geographical areas through the same channels of distribution?

MR. FASS: Not really. There are wide variety of answers to that. In terms of geographic areas, again, I can attest first-hand to basa's sales we're making to parts of the country that sell a lot of catfish. They are selling it as basa. There are also sells being made -- great inroads being in basa sells to the Northeast. Traditionally, I think, one of the weaker areas of the country for U.S. catfish.

So there is overlap, but they are really quite some different markets. Distribution channels -- the distribution channels, ultimately, for all seafood in this country are all converging on a few. We have a few mainline distributors in the United States and that's where all the product is being feed into these days. So it's different distribution network and how it's produced with the U.S. catfish farmers growing and having these relations with domestic processors doing the filleting. The domestic processors, generally, market their product then to the end users, whereas in Vietnam, oftentimes the farmer and then a plant producers and then, coming to an unrelated U.S. importer. So it's a little bit different, but, ultimately, it's being funneled into the same distribution networks, I think.

MS. ALVES: Do you agree?

MS. NGO: Yes, I would agree with Matt. It's the same sort of structure for us. We have various different channels of distribution. Basa fillets can be sold on the West Coast, East Coast, Midwest -- and as I've stated in my testimony, I'm also a purchaser of domestic catfish. We bring in a large quantity of domestic catfish that we sell locally in the Bay area where we're headquartered and in Southern California, which consumes quite a bit of catfish.

MS. ALVES: You are also selling catfish in the other areas as well?

MS. NGO: We sell both. When a customer calls up, they are not substituting catfish over basa. As Matt explained, a customer will say today I need 10 boxes of catfish and maybe 2 cases of basa or something -- options of which they work with, not just as a competition product.

MS. ALVES: Is the basa and the tra being sold year around in the U.S. market or is there more of a seasonal nature?

MS. NGO: It's sold year around.

MS. ALVES: In your experience is catfish also being sold year around as well?

MS. NGO: Yes.

MS. ALVES: Would you address, either here or in your post-conference brief, two threat factors that petitioners did not fully discuss in the petition. That would be with respect to inventories and the potential for product shifting.

MR. SIM: We will be happy to discuss that in the brief, but I think we touched on both points in Dr. Dung and Mr. Hau's testimony that inventory is not really a factor. You really can't keep a large stock of the stuff. For the product shifting, I think it was covered when both persons testified. We will have more detail in our post-conference brief.

MS. ALVES: Thank you. Are there any anti-dumping findings or remedies in other countries involving Vietnamese basa or tra?

MR. SIM: No.

MS. ALVES: This morning there was some indication that there maybe some further processing done on the Vietnamese basa and tra here in the United States, can you explain more what was meant by that?

MR. FASS: There are a variety of ways seafood makes its way through the system before getting to a customer's plate.

There are, for example, a number of companies in the United States who are known as breaders. Again, the catfish is an interesting -- I'm learning a lot about U.S. catfish distribution in that the processors do some of their own breading right there.

There are a lot of U.S. companies that just bread a variety of different products, whether it be for some contract business they have for various institutions. So they might take in shrimp and all sorts of different things and bread them over the course of a year. I am certain that -- I would think that basa is going to some of those breaders first for breading, and ultimately, making its way through the system -- or marinating or something like that.

MS. ALVES: To your knowledge, are any of the processors named in the petition involved primarily in catfish processing are they among the ones who may be purchasing or importing the Vietnamese basa or tra or are there other breaders out there that maybe?

MR. FASS: I'd rather talk about that in a more confidential way.

MS. ALVES: That's fine. The reason I'm asking is, in terms of a related party analysis, I'm just trying to find out whether or not there are not there are any relationships between any of the domestic growers and the processors --

MR. FASS: I can say this. I am not that familiar with exactly the name of every processor who is a member of the petition. I do have knowledge of -- I do know some basa is being processed by traditional U.S. catfish processors. Whether or not any of those processors are a member of this petition, I'm really not sure to be honest. I haven't looked that closely at the petition as to exactly who the petitioners are.

If your question was, does some basa make its way to some traditional catfish processing houses, my knowledge of that is yes.

MS. ALVES: If you could provide more specifics in the post-conference brief, that would be helpful. This would involve either direct importing or if they're purchasing, for example, large volumes and doing the processing in house. That would be helpful to know. Thank you. Those were all the question I had at this point.

MR. FEATHERSTONE: That question might well be addressed to the petitioners as, so if you could help on that. Mr. Glamalva?

MR. GLAMALVA: I have just two quick questions. Firstly, are the frozen basa and tra fillets available over the same size ranges as domestic catfish fillets? In other words, the 2- to 3-ounce fillets up to 7- to 9- or 9- to 11-ounce fillets?

MR. FASS: Yes -- generally, yes. There is a little seasonality to it, but, generally, yes.

MS. NGO: Yes, they are.

MR. GLAMALVA: All three of the species that we're talking about are available over the whole size range or are some of them -- is one species responsible for the smaller size and the other species for the larger size?

MS. NGO: It does vary on species. I'm aware that basa, primarily, is in a larger range size -- your 8- to 10-ounce, 10- to 12-ounce, 12- to 14-ounce fillet sizes and the tra fish, as I have seen it, have come in the smaller size. I don't know what the percentage breakdown is as far as ranges in size, but, yes, the do come in smaller sizes also -- if you're talking about fillet form.

MR. GLAMALVA: Right. Did I understand you to say that the tra is generally a less expensive fish than the basa?

MS. NGO: Yes.

MR. GLAMALVA: So we would expect to see some difference in the price in the different size ranges?

MS. NGO: Yes.

MR. GLAMALVA: The other is really a comment. Mr. Fass mentioned that he could provide some price series data on different types of seafood. If you would, please provide that or a citation for public data on price trends for different types of seafood in your post-hearing brief.

MR. FASS: I would happy to.

MR. GLAMALVA: Thank you. That's all the questions that I had.

MR. FEATHERSTONE: Mr. Deyman?

MR. DEYMAN: George Deyman, Office of Investigations. I would like to reemphasize the fact that we would like you to comment on the specific HTS U.S. numbers and the import statistic that you believe that the subject product is coming in under. There are four numbers in the scope -- four HTS numbers that have been referred to by the Commerce Department. It is not clear, of course, under which, if any, of the numbers the subject product is coming in under.

I would like the two importers here -- the individuals from H&N Foods and Maritime Products International and any others of you that maybe importers, if you could, in the post-conference brief, indicate to us for the subject product that you imported the specific HTS statistical numbers under which you imported it.

Also, for all non-subject, other than basa and tra frozen fish fillets from Vietnam, the specific HTS numbers under which you imported them. If you could do that, please.

MR. SIM: Yes, we will do that in the brief.

MR. DEYMAN: Also, with regard to breaded product, do either of the two importers here import the breaded product at all or marinated?

MR. FASS: Not at this time.

MR. DEYMAN: Okay.

MS. NGO: I don't do any imported marinated or breaded product.

MR. DEYMAN: Well, perhaps, the attorneys or someone in the post-conference brief could shed light on if there were breaded or marinated product coming in, under what HTS statistical reporting numbers would that be entered. I believe it would not be under one of the four that were mentioned in the Commerce notice, but I'm not sure.

MR. SIM: We will check into that.

MR. DEYMAN: I was going to ask how could it be that in a market where demand is increasing, if it is increasing -- according to the petitioners it is -- why are prices going down? Usually, when demand goes up, the prices go up.

Now you have given some reasons why the price of the product from Vietnam has been decreasing over -- at least according to the unit values and the import statistics, it has been decreasing, such as the recession; perhaps, competition from other types of fish. But there was on intriguing reason.

It was mentioned that the subject product consist, of course, of both basa and tra and that tra has a lower unit value and the imports of tra have been increasing relative to the basa and that's why the overall unit value is going down.

I would like you to tell me a little bit more about the differences between tra and basa and why they exist. Could you do that now?

MR. VANDER SCHAAF: I think we could probably detail that better in the brief because I think you've got a growing end difference, but maybe not much of a product preference difference or a difference in taste type issues on the consumer end. But like every seafood, if you ask 10 people, you get 10 different answers with respect to flavor, taste, and texture. So I think we will have to do a mini-survey of everybody we talk to and find out where the consistent argument is because I think there are differences of opinion on that.

MR. LO: This Albert Lo of White & Case. My understanding regarding the production process, I think, for tra you have a shorter growth season; therefore, you have a higher turnover.

MR. FASS: That's part of it.

MR. LO: Yes, that's part of it.

MR. FASS: The differences between the fish exist, but again, they are slight. The basa is generally a little bit whiter -- maybe a little bit thicker fillet. It just has a little different appeal to some who, therefore, then perceive it with a little higher value.

That, along, with a little less availability, because of the growing season -- if there is a threshold here of what people think is a really great fish, the basa maybe up here (indicating) and the tra is still way above that threshold or many just slightly below.

So the tra is so acceptable to so many people that they would love that fish if they can buy it for just a little bit less than the basa. So that is what's probably taking over a little bit.

MR. DEYMAN: Now you circulated some product literature relating to basa earlier. Do you have the same thing for tra?

MS. NGO: Yes.

MR. DEYMAN: And sometimes is basa marketed as tra or tra as basa? I mean, are they as really interchangeable or is there really a difference between these two types of fish?

MR. FASS: I'll try to give a very short answer to that. What happened after the catfish legislation passed about labeling is that there was a tremendous amount of confusion in the market. A lot of people asked FDA to help define things a little bit, and FDA, essentially, released in writing -- throwing up their hands a little bit, saying we don't really know what to tell you to call things now, but you can't call it catfish.

So what has happened a little bit is that -- a good analogy is salmon. There are tremendous amounts of different grades and species of salmon -- Copper River salmon, pink salmon, chunk salmon, but they're all salmon.

So what some people are doing -- these fish are all the pangasius fish. They are very similar to each other. They are actually different grades a little bit within some of the same species, depending upon some growing conditions.

So some have just said-- you know, seafood can be very confusing to the public, so we just like to go with the name basa. We'll go with special barcardi basa for one and just regular basa for another, maybe a pinkish basa for another like we have pink salmon. Others have said, no, let's go with tra and basa. So it's evolving. Let's put it that way.

MR. VANDER SCHAAF: Mr. Deyman, can I add one more comment. About this micropangasius -- this pangasius -- I'll double check this. Again, I'm getting different stories with respect to this issue, but I understand that, that identification no longer exist. The reason why it was eliminated was because it was leading to confusion of whether there was a third.

I have told and have been given some literature that I haven't had a chance to look through yet, that, that identification is now going to be wiped off the charts. That it, instead, should be one of the others. I think it now going to be -- whatever it was identified as a micronameous will now be identified as the hypothelmas. I'll confirm that because we are also developing that issue.

MR. DEYMAN: Just one more question. There was an article in the Vietnam Investment Review of January 14 of this year. The article mentions, and I will quote "The new association of Vietnamese catfish producers plans to export $150 million worth of catfish to the U.S. by 2005."

I would like for you to comment on that, either now or in the post-conference brief. On, first of all, the accuracy because this is something from the press which may not be correct; but on the accuracy and also, on your take on this.

MR. SIM: I would like to comment on that in the brief. I would rather not comment on that now.

MR. DEYMAN: Okay. I have no other questions. I would like to thank you all for making your presentations, and especially, those who came all the way from Vietnam. It's very helpful to have you here. Thank you.

MR. SIM: Thank you.

MR. FEATHERSTONE: All right, we probably beat this to death, but on the issue of a possible share shift between basa and tra or sawi -- the extent that there is distinct price difference between the two, and that there has been a significant shift or enough of a shift in volume that, that could have influenced the pricing, which I think was the gist of the testimony earlier, any information you can provide us on that; especially, with respect to the companies that are dealing in both of them, would be helpful.

I understand that you, Ms. Ngo, may have actually given us separate pricing in your questionnaire for the two, which would be helpful, certainly, if it's accompanied with some volume data. I'm not sure whether we asked the question explicitly in the questionnaire, though.

So my guess is that most of the responses are not going to distinguish between basa and tra or whatever the other one is known as. So to the extent you can help us on that, at least in developing that particular line of argument -- that the trend in pricing is a result of shift in volume. That would be very helpful.

MR. VANDER SCHAAF: Mr. Featherstone, I think one thing has to be emphasized as well. We will try to get to the bottom of that. First of all, I am not sure the importers will be able to distinguish basa and tra, but it's distinguishable in the context of the average unit values that are reported by Customs because it's the importer who might pay a different price for the product, not the customer the importer sells to. It's not clear to us that importers are selling basa and tra at different prices.

It is clear to us that they may have paid for a different price to the foreign producers because the foreign producer has a different cost associated with those items. He's going to base his price on his cost of production. The cost of production is slightly less for tra. So the importer would probably get a better price for that, that he pays -- not necessarily the price at which he sells.

Some people identify basa as being a high value product, and an importer who can sell it for a high price is going to do so. There are a lot of perceptions in this market, and there maybe -- because of this lack of distinction in this country between basa and tra, he might be able to sell tra at a high price as well. So we will try to explain that in as much detail as we can, but I'm not sure that's going to be crystal clear to the importers.

MR. FEATHERSTONE: It maybe that no difference is apparent on the selling price data, but if it affect the unit value analysis, which we're also looking at here, that would be helpful there as well.

Any other questions? Thank you all for your testimony and the answers to our questions.

Ms. Slater, would you like 10 minutes?

(No verbal response.)

MR. FEATHERSTONE: We will take a 10-minute break. We will resume at 2:00 o'clock by the clock in the back of the room for the closing statements. Thank you.

(Whereupon, at 1:50 p.m., a short recess was taken.)

MR. FEATHERSTONE: Welcome back. Ms. Slater?

MS. SLATER: Thank you, Mr. Featherstone, Commission staff members. It's always hard to use your short 5-minute period to talk about a thousand things, but I'm going to make just a few points, and I'll let us all get off to lunch.

You know, it's a little bit hard to sit here and listen this morning to some of the approaches that I think are being taken by the respondents. One of which of which seems to be that this product is not going into the catfish market. What you've heard is the testimony from one importer, H&N, who I will tell you, I think is widely regarded -- even in the catfish industry -- as having been a fairly good player in the sense of having been careful with labeling issues.

Frankly, had the entire import community been that responsible, we might not be here today; and the labeling laws that were such a difficult struggle to achieve might not have been necessary.

We have heard from that one particular importer who is not typical of the entire industry. We have also heard from Mr. Fass who says his basa and tra doesn't replace catfish because he didn't sell any catfish.

Well, of course, the people to whom he's selling -- the distributors to whom he is selling purchase catfish. If we look at who his customer base is, that's where the point of competition would occur between his Vietnamese imports. But the notion -- just to be clear -- and we will be able to do a thorough job for you in the brief.

The notion that this basa and tra is not coming into the catfish market is more than a little bit silly. Just to give you some idea, you've heard us talk about it, but if you take a look at some of the boxes in which this has been shipped to the United States -- Cajun Delight Catfish. This is Vietnamese basa and tra fillets, basically.

Harvest Fresh, which is one of the big exporting companies from Vietnam uses a symbol, which is designed to look very much like some of the U.S. processors who are called Harvest Select, Farm Fresh. They've picked up on many of the names and are repeating them of the U.S. processors.

This stuff has been sold as catfish and the targeting of the catfish market, which we can also show you through all kinds of marketing brochures and public statements -- this is from Harvest Fresh Company. It's quite a long marketing presentation that we've obtained a copy of that talks about the principal purpose being to market this as farm-raised catfish; and particularly, being able to market it as a competitively-priced alternative to U.S. farm-raised catfish.

This Vietnamese basa and tra has been targeted to the U.S. catfish market and the large increases that we've seen in the volumes are directly a result of using that market name.

I think, also, we want to just briefly, and we'll do this, obviously, to a great sense in the brief, talk about capacity expansions. The industry has expanded. The industry has grown tremendously, but the expansion that we've seen in recent years has been completely consistent with its long growth pattern and with the long-term demand pattern.

There has been no unusual or large growth that was not completely in line with the growth we've seen and the curve over time. It's completely consistent with the demand curve that was expected, and in fact, occurred; but much of that demand has been taken by this Vietnamese fish.

I can't resist. I have to just take a minute to quote to you from the USDA report that's been cited with respect to the allegation that the USDA says that it's really poultry supplies that are causing the problem. That report says frozen catfish products were down 6-and-1/2 percent in 2001 from the previous years -- the lowest decline since '93, and I quote "The largest price decline was for frozen fillets. The category most affected by the increase in catfish imports, which were primarily frozen fillets from Vietnam."

So whatever tangential impact there may have been from broilers or chicken or what other feathered friends they are mentioning, there is absolutely a clear connection between this basa and tra imports and what's happening in the catfish market.

I want to just also briefly touch on the notion that it's the economy, stupid. Well, it's not the economy, stupid.

When we take a look at sales trends from some of the biggest companies and some of the biggest buyer, in fact, of the frozen fillets, what we see is that from 2000 to 2001, sales are up -- 7 percent for Cisco, 9 percent for Cracker Barrel, which is a big user of frozen catfish fillets; Appleby's is 10 percent; Red Lobster, 8 percent.

Whatever general perceptions there maybe that it's the economy, stupid. There is no real evidence in the data to suggest that Americans are eating out less. Certainly, at these types of restaurants that Cisco is selling less -- the big food distributors are selling less or that less catfish has been moving because of the economy. We will give you more on that in the brief, but I think that's just a misplaced notion.

I want to just briefly end with something on the volume of these imports. We don't have a way of knowing exactly how much there is there. There are people who do know that. The importers know how much basa and tra has been brought into this country, and I would hope -- although, we haven't seen the APO yet, that we would have the APO release and be able to get data from the importers on how much they've brought in. It's not that many of these importers. They have that information.

I would think that the Vietnamese government and Vietnamese exporters know how much basa and tra frozen fillets have been exported to this country. I listened very carefully to the very careful questioning earlier today and didn't hear the answer to that question. This number is somewhere between 17 and 30 million pounds. Seventeen million pounds last year was enough, but when you realize that somewhere in that range, and probably closer to 30, you begin to understand why maybe those numbers are not popping up so quickly in response to your questions.

There has been an incredible amount of fish that is not yet been widely known and marketed as basa. We've done some product surveys recently that we will tell you about in our post-conference briefs.

You heard the witnesses for the respondents today talk about the fact that it will take time. We are working on building a basa market. It will take time. Yes, it will. It will take time, and in the meantime that basa and tra is coming into the U.S. catfish market and causing tremendous problems for our industry.

We hope the Commission will be able to sort out this somewhat complicated case. We will do our best to help you and we thank you for your attention this morning.

MR. FEATHERSTONE: Thank you, Ms. Slater.

MR. VANDER SCHAAF: Hello, again, I'm Lyle Vander Schaaf from White & Case.

Just a few points. First, we believe that the petitioners' arguments about the quantity of fish -- the basa and tra imports that is going into catfish market is exaggerated. They have engaged in a very successful marketing campaign against imports of basa and tra, leading up to their success of getting Congress to declare that basa and tra is not catfish and it's a different product.

We hope that is one issue that the Commission can get to, but we do believe that, that is over exaggerated. The basa and tra importers have gone to great lengths to develop their product and market their product. And it is very difficult to develop product lines for seafood in this country; particularly, where seafood is really under utilized and under eaten by our society as a form of protein.

But the basa and tra distributors in this country and importers are going to continue to establish basa as a name. They have every right to do so just as producers of tilapia developed that name in this market. Long ago, people really didn't know what red snapper was or Chilean sea bass and those distributors and marketers of that product have been very successful at developing that product.

I guess the point that we're trying to make is that it is just not fair and it's not appropriate under our Trade statute for the catfish industry to say that a new product line that is different than theirs cannot be established in this country.

They have gone to great lengths, as you have heard from our witnesses, to develop the basa and tra name or the Vietnamese subject import product's name. That has distinguished itself from other fish out there, including catfish.

The other thing we would like to emphasize in the concluding remarks is that basa and tra really are alternative products to catfish, not substitutes -- just tilapia is an alternative product and cod and some of the other white fish. It is a white-colored, mild tasting, low cost, easy to prepare fish. There are a number of fish that fit that category. To say that basa and tra has been a cause of the domestic industry's condition is really false. There is way too much going on in the market and it just rejects and ignores all the market realities out there.

With respect to the fundamental issue of including farmers in the definition of the domestic industry, I have to say I am just absolutely flabbergasted that the petitioners have even tried to bring this off on the farmers. I can't believe that no one stopped to look at the Commission's precedent as to what the standard is, and the court precedent that's out there which requires a certain threshold of dedication of the raw product into the processed product.

I've provided you with the basis data from the U.S. Department of Agriculture. There is no need to go through the convoluted, backed out analysis by the petitioners that they provide in their complaint. The numbers are there. They provide monthly growers sales to processors, quantities in thousands of pounds, and they provide the monthly quantity of frozen catfish fillets produced by the processors in thousands of pounds.

They identify a number of other products in these statistics -- whether it's fresh whole fish, fresh fillets and other fresh products. Then, of course, there are frozen whole fish and other frozen products. All of these products take up a significant portion of sales to processors by the growers such that the amount of catfish sold to the processors for filleting really comes to about 20 percent -- give or take -- depending on the months you are looking at.

We have plotted out several different months over the period of investigation and provided that you as a handout. All of that data is provided from the NASS of the USAD. We will discuss that further in our brief, but it shows very clearly that farmers, with all due respect to them, do not meet the definition and the requirement for being included in a processed agricultural product.

That's all I have to say. Thank you.

MR. FEATHERSTONE: Thank you, Mr. Vander Schaff. A couple of quick admin reminders. The deadline for the submission for corrections to the transcript and briefs on this investigation is next Wednesday, July 24th. If briefs contain business propriety information and non-propriety versions due the following day. The Commission has scheduled its vote on the investigation for August 8th at

2:00 p.m. It will report its determination to the Secretary of Commerce August 12th. Commissioners opinions will be transmitted to Commerce and place in the record a week later on August 19th.

We are also lead to believe that there is an APO release available for pickup if any of you would like to stop by the secretary's office on the way out. Thank you again for your participation. This conference is adjourned.

(Whereupon, at 2:15 p.m., the hearing in the above reference matter was adjourned.)

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CERTIFICATION OF TRANSCRIPTION

TITLE: Certain Frozen Fish Fillets from Vietnam

INVESTIGATION NO.: 731-TA-1012 (Preliminary)

HEARING DATE: July 19, 2002

LOCATION: Washington, D.C.

NATURE OF HEARING: Preliminary Conference

I hereby certify that the foregoing/attached transcript is a true, correct and complete record of the above-referenced proceeding(s) of the U.S. International Trade Commission.

DATE: July 20, 2002

SIGNED: LaShonne Robinson
Signature of the Contractor or the Authorized Contractor's Representative
1220 L Street, N.W. - Suite 600
Washington, D.C. 20005

I hereby certify that I am not the Court Reporter and that I have proofread the above-referenced transcript of the proceeding(s) of the U.S. International Trade Commission, against the aforementioned Court Reporter's notes and recordings, for accuracy in transcription in the spelling, hyphenation, punctuation and speaker-identification, and did not make any changes of a substantive nature. The foregoing/attached transcript is a true, correct and complete transcription of the proceeding(s).

SIGNED: Lorenzo Jones
Signature of Proofreader

I hereby certify that I reported the above-referenced proceeding(s) of the U.S. International Trade Commission and caused to be prepared from my tapes and notes of the proceedings a true, correct and complete verbatim recording of the proceeding(s).

SIGNED: Gabriel Rosenstein
Signature of Court Reporter